

79. Zuffa had various means at its disposal to ensure that champions, or potential champions, were bound to Zuffa for long periods of time. If a Fighter wanted to contend for a title, Zuffa would first insist that the Fighter to sign a new, longer contract. As Michael Mersch, Zuffa's Assistant General Counsel and Vice President of Business, Legal and Government Affairs, explained in an email to Michael Connette, a representative of UFC Fighter Mark Hunt, Zuffa's contracting practices and provisions allowed it to ensure that successful Fighters were locked up:

[T]he "Extension Term" [of the champion's clause] only comes into play should Mark [an MMA Fighter] complete all fights AND be the champion. I can tell you in my 5 years with the UFC that has never happened because we don't let that happen.

Before someone fights for a UFC Championship we would likely have them locked in a longer term deal. Additionally, if a fighter is successful under a 4 fight deal, we typically negotiate a new agreement after the 3rd fight so he *never will see the end of his contract* and, assuming the fighter is successful, or at least competitive, that is the process that will continue thereafter.²¹⁶

Significantly, Zuffa did not need to invoke *formally* the champion's clause, or any other particular contractual provision in order to cause the Fighter to extend his or her contract. The presence of the contractual terms giving Zuffa the exclusive right to prevent the Fighter from leaving, combined with its contracting practices and market power, was sufficient to prevent the Fighter from leaving or testing his or her value in "free agency." (Even if Fighters could have done so, the viability of "free agency" was constrained by the Challenged Conduct, which created conditions under which other MMA promoters could not offer equivalent or viable competitive alternatives to Zuffa).²¹⁷ Record evidence emphasizes the importance of locking up Zuffa's best Fighters.²¹⁸ Joe

216. ZFL-1404974, at 976 (emphasis added).

217. See Parts III.C.1-2, *infra*.

218. See WME-ZUFFA-00001150 at *11 (Champions have on average 6.5 bouts remaining; Ranked 1-5 have 5.5 bouts remaining; Ranked 6-10 have 3.6 bouts remaining; Ranked 11-15 have 3.2 bouts remaining).

Silva testified that this strategy “could ensure that if [the Fighter] became champ [Zuffa would] have them locked up for a longer period of time.”²¹⁹

80. If the Fighter refused to sign a new contract or tried to hold out for a better bargain, Zuffa had several tools at its disposal to put pressure on the Fighter, including, among other practices, delaying the final bout, offering an inappropriate or unfavorable match-up, and/or giving the last fight poor placement on the event’s Fight Card. Delaying a Fighter’s last fight was costly to Fighters, who receive compensation from Zuffa only when they fight.²²⁰ Zuffa could also ensure that a Fighter refusing to sign a new contract made less money at his final bout.²²¹ Zuffa could, in addition, ensure that the Fighter was pitted against a mismatched or unfavorable opponent who could hinder the Fighter’s career, thus putting the Fighter in the position of taking the fight and risk losing or being injured, or turning down the fight and triggering an extension of the Fighter’s contract.²²² As Plaintiff Kingsbury made clear:

219. Silva Dep. at 456:21-25. *See also* Silva Dep. at 455:6-456:11; Silva Exh. 53 (discussing a Fighter (Thiago Alves) who was “on a 7 fight win streak and was the number one contender to fight the winner of GSP versus B.J. Penn,” and offering Alves a “2 tier contract, with a higher path if he becomes champ. The good thing about those is it locks them in longer if they become champ”).

220. Deposition of John Fitch, February 15, 2017 at 119 (“Q: And the reason why you would have to had sit out a year is because after you finished your fight --A: Because if I didn’t sign up, if I didn’t to do the re-up with the contract, I wouldn’t have gotten a bout agreement. Q: Until? A: They would have exercised their time limit term to the full. Q: And the reason you know about that is because you heard about Huerta? A: Because they had done it to other people. Q: And you’ve heard about -- you gave one other example; is that correct? A: Huerta and Arlovski. Q: So you know two examples -- A: I know of two examples where the guys were brave enough to see it through. Most guys know if you don’t sign the re-up, you don’t get your bout agreement. If you don’t get your bout agreement, you don’t get paid, you don’t get money, you can’t feed your children.”).

221. Silva Dep. at 385:15-21 (“Q. If a fighter refused to accept the new deal that you were offering them between the third and the fourth fight, he would face a situation where he was fighting that last fight at less compensation than he would have gotten had he accepted the new deal...? A. Yes, he chose to fight at less money.”).

222. Zuffa could extend a Fighter’s contract by six months if the Fighter turned down a proposed bout. Silva Dep. at 426:6-12. In principle, Zuffa could retain a Fighter under contract in perpetuity if the Fighter refused to accept matchups that Zuffa proposed. Silva Dep. at 433:13-434:16. In a May 2014 e-mail string between General Counsel Lawrence Epstein and Assistant General Counsel Kirk Hendrick, Mike Mersch discussed how best to retain Light Heavyweight Champion Jon Jones. Epstein writes: “We need to send him a letter formally offering the Gustafson fight and giving him a specific deadline to accept or reject. When he says no we need to extend him.” *See* ZFL-0990908. After Roy Nelson’s manager turned down a new contract offer in May 2013, Lorenzo Fertitta wrote “I offered 9 fights 125+50 for regular bout, 500 flat for title fight, 500 plus ppv if defending. If ppv does 600k buys he makes 1.1m. Very

-53-

Joe Silva wanted me to fight [Glover Teixeira, a training partner of Chuck Liddell] on the undercard in Glover's first fight in the UFC. And that is exactly the kind of thing that hurts fighters. Nobody knew who he was. He was extremely talented. It was a lose-lose. If I beat him, I'm supposed to beat him. If I don't beat him, I just got my ass kicked by a guy that nobody knows.

I had another unknown opponent in his first fight in the UFC. I had to fly all the way to England for it. It was on the undercard, and it was against a guy who at the time was 11 and 0, no losses, and not a single opponent had made it out of the first round with him. So he was highly decorated and not known. Again, as stated, a lose-lose for me. And then I had received the damage that I did in that fight. And with my second orbital blowout on the same side, I was really concerned for my health fracturing the eyebrow as well and was just considering is it worth it? I can't get out of my contract. There's nowhere else to go at this point. Strikeforce didn't exist anymore. Pride didn't exist anymore. And I had no way of saying no.²²³

Fighters who chose to reject inferior matchups also faced the risk that Zuffa would retaliate by matching them against even less desirable opponents in the future. According to Dana White,

I can tell you this man, if you call Joe Silva and turn down a fight, you might as well say 'fucking rip up my contract.' He will... yeah. He's a mean little fucker. You don't call Joe Silva and tell him you don't want to fucking fight anybody man. You might as well just take the fight, 'cuz, 'cuz, it's gonna be worse, if you do [refuse the fight]. You might as well just do it, [just say] fuck it, alright? I'll fight him.²²⁴

fair offer." Joe Silva responded "If you can't get Roy to do that deal tell him instead he can fight Dos Santos June 15 in Winnipeg on his last fight for 24+24. [I]f he turns that fight down it allows us to extend his contract." See ZFL-1897652 at 748. See also Deposition of Joseph Silva at 126:14-18 ("Q. But you have, during the course of your work at Zuffa, caused notices to go out to fighters extending the terms of their contracts when they've turned down fights; correct? A. Yes.").

223. Deposition of Kyle Kingsbury, February 17, 2017, at 118. See also Deposition of John Fitch, February 15, 2017, at 87 ("A: So they took really tough amateur-type guys, but the crowd didn't know who they were. It's a lose-lose fight for somebody with notoriety. Because if you don't go in there -- if you go in there and completely beat the guy up, fine, you were supposed to. They didn't know who the other guy was. You go in there and you win, but you don't destroy the guy, oh, you suck now because you didn't destroy a guy with no name. Or you lose, you lose to a guy who has no name, and now your notoriety and your value drops immensely. They may even cut you because you lost. So that is one of the most subtle ways that they really put fear into people, is they control your destiny. They control who you fight, when you fight, and how much you fight for.").

224. *UFC on Fuel TV 7 post-fight media scrum* (Feb. 2013), available at <https://youtu.be/y0NTiITqn2w?t=12m9s>. See also Deposition of Nate Quarry, September 30, 2016, at 47:23-25 ("As Joe Silva said one time, 'If you don't like the first fight I offer you, you're sure as shit not going to like the second one.'"). See also ZFL-1421551 (In April 2010, Joe Silva wrote regarding negotiations with UFC fighter Nick Diaz, "I lowballed them on purpose the first offer knowing they would turn it down. How bout I come back with 29+29 32+32 35+35 38+38. If they turn it down I put him in a prelim against a really tough guy for his last fight."). See also Silva Dep. 405:12-19 ("So everything's equal. And the only thing you know now is that this guy's main card worthy and he has agreed to re-up, versus, it's the same situation, main card worthy where he's not agreed to re-up. You'd more likely give the main card in a better position to the guy who has agreed to re-up as opposed to the one who hasn't; right? A. Yes."); ZFL-2496215 (July 2012 e-mail exchange between Joe Silva, Michael Mersch and Tracy Long discussing that it was Quinton Rampage Jackson's

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

Zuffa could also retaliate by giving a Fighter inferior card placement; for example, a Fighter could be placed on the undercard instead of the Top of the Card.²²⁵ If a Fighter lost even once, Zuffa could use (or threaten to use) the Cut Clause to cut Fighters in the middle of their contracts, allowing the Fighter to fight again only after agreeing to lower compensation.²²⁶

81. Further, Zuffa leveraged its tolling provisions to extend Fighters' contracts beyond the period of injury.²²⁷ When a Fighter was injured, Zuffa would interpret its contracts to provide an extension of time equal to the time between fights, not the actual length of time that the Fighter was injured.²²⁸ In practice, this meant that Zuffa itself had control over the length of time the contract was extended. In July 2009, Tracy Long, a Zuffa employee overseeing management of Fighter contracts, wrote "we sent an injury extension letter for Fabiano on April 7, 2009. How much time do you want to add to his agreement?" Sean Shelby, a Zuffa matchmaker, responds,

last fight on his contract, would not sign a new deal and that Zuffa used its discretion to not make Jackson's bout the main event).

225. In April 2010, following UFC's regular practice, Joe Silva offered fighter Nick Diaz a new contract before Diaz's last fight. Silva explained, "If they [Diaz's team] turn it down I put him in a prelim against a really tough guy for his last fight." Silva Dep., Exh. 43 (ZFL-1421551). Silva testified that he would have matched Diaz against a tough guy regardless, but admitted that, all else equal, he would be more likely to give the main card to a fighter who has renewed their contract, as opposed to one who has not. *See* Silva Dep. at 401:2-19, 405:12-19.

226. *See, e.g.,* ZFL-2496264 (Fighter Hector Lombard was on "his 4th fight of an 8-fight Agreement." Under his original contract he was entitled to "205K to show and \$75 to win" but Joe Silva explains, "He is no longer under that deal. In return for not being cut he is fighting a 1 fight deal for 100K.").

227. At some point before November 2012, Zuffa began automatically issuing injury extensions to Fighters known to be injured after a bout, regardless of whether the Fighter had been offered another fight. Silva Dep. at 412:7-413:22.

228. *Id.* at 410:15-21 (Silva would "always just do it [issue the extension] for the time period in between fights."); *id.* at 421:6-17 (same). *See also* ZFL-2536288 (Fighter Matt Wiman writes: "Hey Tracy, I'm a little confused about my extension ... Can u explain it in simpler terms to me ... I was only injured for 2-3 months and the letter states an 8 month extension." Long responds: "Joe Silva gave me the time-frame. I believe it is based upon when you last fought and when you will fight. You last fought on October 1, 2011. You are now scheduled to fight on September 29, 2012." Wiman: "So all the months I'm training and waiting patiently are not counted? This is bc there's so many fighters and you all have to honor your contracts?"). *See also* ZFL-2494948 (Bryan Caraway receives a six month extension on top of four month extension. Caraway: "I was only hurt for 2 months?? Why is my contract being extended 6 months?" Long explains the math to Sean Shelby, based on time between fights). *See also* Deposition of Joseph Silva at 390:24-392:3.

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

“Whatever gets the most amount of time per the contract.”²²⁹ In his deposition, Joe Silva testified that, if Zuffa learned that a Fighter became injured in between fights, Zuffa would automatically extend the duration of the contract for the entire period between fights—even if the injury did not prevent the Fighter from being available on schedule for his next fight.²³⁰

82. Zuffa exploited its tolling provisions to extend Fighter contracts even when there was no record of Fighters actually being injured. When Long discovered in October 13, 2014 that Mats Nilsson was only on his second fight of a four-fight Agreement terminating on November 8, 2015, head matchmaker Joe Silva told her to send him a six-month extension despite having no record of Nilsson being injured.²³¹ Long emailed Mersch to ask him what she should do, and he responded, “I guess we just need some sort of basis for the 6 months extension Joe is asking us to add onto his deal.”²³² Ultimately Zuffa sent a six-month extension letter.²³³

83. Zuffa exploited the retirement clause to prevent other MMA promoters from retaining UFC Fighters it wanted to keep from them. For example, in August 2014, Mark Bocek announced his retirement, and then requested that Zuffa release him from his contract. Joe Silva wrote in a text message: “Bocek was sent a retirement letter but now he is asking for a complete release. He’s coming off a win so I would not give it to him. He could end up fighting for Bellator [sic].”²³⁴ Zuffa further exploited the retirement provision to indefinitely prevent retired

229. ZFL-2685237.

230. Deposition of Joseph Silva at 412:7-12 (“Q. So just so I’m clear, Zuffa finds out that a fighter is injured the day after a fight, it automatically issues an injury extension to that fighter even if that fighter hasn’t been offered another fight; is that right? A. Correct.”). *See also* Deposition of Joseph Silva at 408:24-413:7.

231. ZFL-0529761 at 62-63.

232. ZFL-2479576.

233. ZFL-0529761 at 61. *See also* ZFL-2494934 (similar example for Bradley Scott in Feb. 2015: Silva instructs Tracey Long to add 10 months to his contract despite noting “We don’t have any record for any injuries for Bradley Scott. If he got hurt, he never reported it to us”).

234. ZFL-1897652 at 796. Silva used the term “Bellator,” which was a made-up combination of Bellator and Strikeforce, to refer generically to other MMA promoters. *See* Deposition of Joseph Silva at 469:22-25.

Fighters from even appearing at (not fighting in) other MMA promoters' events. For example, when Bellator announced that a retired UFC Fighter—who had last fought for the UFC more than 18-months earlier—would make promotional appearances in connection with an upcoming Bellator event, Zuffa invoked the exclusivity terms of the Fighter's contract to prevent the Fighter from participating.²³⁵

84. Fighters who made it to the end of the defined term of their contracts—that is, those who fought the requisite number of bouts during the requisite time period, endured any extensions, and turned down Zuffa's renewal offers—were still bound exclusively to the UFC for many months. Even after the “term,” if a Fighter wanted to Fight for another MMA promotion, that Fighter would first need to wait out up to three months of the exclusive-negotiation period—during which time the Fighter was forbidden from engaging with any other MMA promotion. Next, the Fighter would need to endure the year-long right to match period, during which the Fighter is required to bring any offer from another MMA promotion to Zuffa; if Zuffa agrees to match, the Fighter is then automatically bound to Zuffa under the terms of that matched contract.²³⁶ Only after these extended delays—during which Fighters would not be fighting, and thus not earning MMA income, and also risked sacrificing their prominence and marketability²³⁷—could they negotiate freely with other MMA promoters, whom themselves were hobbled by the difficulty of

²³⁵ ZFL-0469293 (Nov. 10, 2014 letter from Kirk Hendrick demanding that Silva not appear at Bellator's events); ZFL-1016893 (discussing Zuffa's efforts to block Silva from appearing); *see also* Hendrick Dep. V.I at 170-72 (describing Wanderlei Silva's potential activities “promoting” Bellator's event, “showing up at a press conference” for Bellator and attending the event as violating Silva's Fighter Contract). Silva announced his retirement on September 19, 2014, citing fighter treatment and poor pay from the UFC as his motivation. *See* <http://mmajunkie.com/2014/09/wanderlei-silva-lashes-out-at-ufc-in-video-announcing-retirement-from-mma>. Silva had last fought for the UFC in March 2013, more than 18 months prior to his retirement.

²³⁶ *See* Part II.B.2, *supra*.

²³⁷ Silva Dep. at 463:23-464:8.

-57-

gaining access to sufficient Fighter talent due to the Challenged Conduct.²³⁸ In short, through its contracts and contracting practices, Zuffa conferred upon itself the power to impose substantial costs and risks on Fighters (with short careers and windows of opportunity to exploit them), creating powerful incentives for Fighters to sign new contracts with the UFC, instead of holding out for competing offers from other MMA promoters.²³⁹

85. In the economic literature, contractual terms such as Zuffa's right to match clause are known as the "Right of First Refusal" ("ROFR").²⁴⁰ Economists have shown that ROFRs, under certain conditions, can be beneficial to buyers (in this case, Zuffa), and harmful to both sellers (in this case, Fighters) and potentially competing buyers (in this case, other MMA promoters). Because "the seller places himself in a disadvantageous position by awarding the special buyer this right [of first refusal],"²⁴¹ economic analysis "offers prescriptive advice: considerable caution should be exercised prior to granting a right of first refusal."²⁴² Other economists have shown that ROFR can reduce the incentives for other buyers to compete with the favored buyer, which "reduces the marketability of the seller's asset."²⁴³ As economist Michael

238. See Parts III.C.1-2, *infra*. Indeed, as discussed further below the UFC engineered its contracts such that their possible expirations would be staggered, preventing other MMA promotions from being able to gain access to multiple top-flight Fighters at the same time. See Part III.C.3, *infra*.

239. Deposition of John Fitch, February 15, 2017 at 121 ("Q: Okay, but outside of the re-up, if you really didn't want to sign the re-up, the contract would end after the duration of the contract, which in the case of Exhibit 51, I believe is 18 months, and then -- A: 18 months without making a dime. That would retire a fighter. We don't make that much money. You don't fight, you don't work for 18 months, you're not going to survive, you're not going to live. You don't get a choice."). See also ZFL-2642993 (January 2008 email from the agent for Andrei Arlovsky, a former UFC Heavyweight Champion, stating that "It is extremely damaging to Andrei's career to be shelved for such a long period of time [more than one year]").

240. Sushil Bikhchandani, Steven Lippman & Reade Ryan, *On the Right of First Refusal* 5(1) ADVANCES IN THEORETICAL ECON. (2005).

241. *Id.* at 2.

242. *Id.*

243. Marcel Kahan, Shmuel Leshem & Rangarajan Sundaram, *On First-Purchase Rights: Rights of First Refusal and Rights of First Offer*, 14 AMERICAN L. & ECON. REV. (2012). See also Leandro Arozamena & Federico Weinschelbaum, *A note on the suboptimality of right-of-first-refusal clauses*, 4(24) ECON. BULLETIN (2006) 1-5, at 1 ("We show that, under independent private values, no mechanism that includes an ROFR clause can maximize the

Leeds and his co-authors explain in *The Economics of Sports*, restricted free agency in professional sports confers an ROFR to a player's original team; as a consequence, "the expectation that the original team will match any offers may reduce the size or number of offers a restricted free agent receives."²⁴⁴

86. Consistent with this literature, the practical effect of the right to match period was to block rivals from signing Zuffa Fighters for the entire twelve-month right to match period—a substantial fraction of a typical Fighter's career.²⁴⁵ There are virtually no examples of Fighters successfully departing Zuffa during the right to match period; the few exceptions have occurred after this lawsuit was filed—and even in these cases, record evidence indicates that Zuffa has taken care not release sufficient Fighters to allow would-be rivals to stage competitive bouts.²⁴⁶ A would-be rival does not gain a competitive advantage if it signs Fighters away from Zuffa, but fails to sign suitable opponents for them.

87. The right to match clause carried additional negative implications for other MMA promoters, including the requirement to divulge key competitive information about the terms of their Fighter contracts to Zuffa. Scott Coker, formerly CEO of Strikeforce and currently CEO of Bellator, explains how granting Zuffa access to Bellator's Fighter contract information (as the right

joint expected surplus of the seller and the right-holder. Adding such a clause to any given auction format, then, is jointly suboptimal for the two parties involved.”).

244. MICHAEL LEEDS, PETER VON ALLMEN & VICTOR MATHESON, *THE ECONOMICS OF SPORTS* (Routledge 5th ed. 2016) [hereinafter *ECONOMICS OF SPORTS*].

245. See Part II.C.2, *infra* (documenting Fighters' short careers); see also Hendrick Dep. V.I (“If [a fighter is] ready, willing, and able to fight and they want to fight, 12 months I would say is a time period that is significant for a fighter's career.”).

246. See ZFL-1872579. In a February 2014 text message discussion between White and Lorenzo Fertitta regarding re-signing Gilbert Melendez, Melendez's contract with Zuffa was ending and he had come to an agreement with Bellator. In response, Zuffa exercised the right to match clause to re-sign Melendez. See ZFL-1897652. Fertitta texts White: “We gotta keep taking these fuckers oxygen till they tap out. We have sacrificed too much to let anyone get traction now[.]” At his deposition, Fertitta testified that the term “fuckers” referred to Bellator, while the “oxygen” referred to Fighters Gilbert Melendez and Eddie Alvarez, both of which Bellator was attempting to recruit. See Fertitta Tr. at 291-92.

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

to match clause requires) would permit Zuffa to “obstruct and stifle Bellator’s initiatives or to exploit its weaknesses,”²⁴⁷ including blocking Bellator from accessing Fighters critical to its business. Independent analysts recognize that the ROFR works in concert with other exclusive provisions of Zuffa’s contracts to keep Fighters bound to Zuffa. According to a 2009 Deutsche Bank Report:

UFC athlete contracts are designed to retain talent within the Company. Most contracts are two years in length with an exclusivity clause that prevents fighters from moving to different MMA organizations while under contract and with negotiation and matching rights after the agreement expires.²⁴⁸

2. Given Fighters’ Short Career Durations, Zuffa’s Exclusionary Provisions Were Effectively Perpetual for Fighters Who Zuffa Wished to Retain

88. I define the cumulative duration of exclusivity as the sum of: (1) the contract term (including the lead-up time to a Fighter’s first bout); (2) the option period (for those Fighters who had such a provision); (3) any exclusive negotiation period; and (4) the right to match period.²⁴⁹ During (1), (2 if present), and (3), Fighters are directly prohibited from negotiating with or fighting for any other MMA promoter. For the duration of (4), Fighters remain unable to negotiate freely with other MMA promoters, because Zuffa can retain the Fighter simply by matching the terms of any competing offer, with the Fighter contractually obligated to accept Zuffa’s matching terms without further negotiations. In other words, Zuffa maintained and exercised the unilateral and exclusive ability to block any Fighter under contract with it from fighting for another MMA

²⁴⁷ Coker Declaration ¶15.

²⁴⁸ ZUF-00162329-382 at 361. Another 2012 Deutsche Bank Credit Finance Report found that “marquee fighters typically have longer-term contracts, with an exclusivity clause, that prevents fighters from moving to different MMA organizations while under contract, and with negotiation and matching rights after the agreement expires.” *See* DB-ZUFFA-00006389 at 392. *See also* Goldman 30(b)(6) Tr. 71:18-72:3 (Zuffa told Deutsche Bank as part of their efforts to sell Zuffa’s debt that “the exclusivity clause that prevents fighters from moving to different MMA organizations while under contract and with negotiation and matching rights after the agreement expires is part of how the [Fighters’] contracts are designed to retain talent within [the UFC].”).

²⁴⁹ *See* Part II.B for details of these contractual terms.

-60-

Promotion for the entire period, stretching from (1) through and including (4).²⁵⁰ Zuffa's ability to withhold Fighters from other MMA promoters factors prominently into my analysis of foreclosure and the anticompetitive effects of the Challenged Conduct.²⁵¹

89. As seen in Table 1 below, the typical duration of contractual exclusivity from 2001 through 2015 is approximately 34.5 months (equal to an average of 19.0 months of the initial term, plus 2.5 months in options, plus 1.5 months of exclusive negotiation, plus 11.5 months of right to match).²⁵² The average duration of exclusivity has increased over time, fluctuating between 5.7 months (in 2003) and 40.3 months (in 2014). The average duration of exclusivity over the Class Period was 36.7 months. The median duration was 35 months.

250. Silva Dep. at 186:4-12 ("Q. Would you agree with me that if there was a UFC fighter who no longer wanted to fight with the UFC for some reason and the UFC was determined to match any offer, that that fighter, in order to get out from under the contract, would need to wait the 90 days of the exclusive negotiation period and then the 12 months of the right to match; correct? A. That's my understanding.").

251. See Parts III.C-D, *infra*.

252. Zuffa has produced contracts executed by Fighters between May 2001 and November 2015. I have no reason to believe that contracts executed after November 2015 differ materially from those executed beforehand.

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

-61-

TABLE 1: AVERAGE DURATION OF CONTRACTUAL EXCLUSIVITY (MONTHS)

Year	Initial Term	Option Period	Exclusive Negotiation Period	Right To Match Period	Total
2001	13.01	0.00	1.80	11.40	26.21
2002	9.25	0.00	2.00	12.00	23.25
2003	1.00	0.00	1.58	3.12	5.69
2004	5.17	6.40	1.68	5.35	18.60
2005	5.75	2.33	1.67	4.96	14.71
2006	12.08	2.21	1.92	10.54	26.75
2007	16.51	4.69	1.91	11.59	34.69
2008	18.96	3.01	1.97	11.94	35.89
2009	19.37	2.14	1.99	11.92	35.42
2010	19.72	1.40	1.99	11.96	35.07
2011	19.18	2.36	1.04	11.93	34.51
2012	19.75	3.60	0.01	11.92	35.28
2013	20.78	2.98	0.01	12.00	35.78
2014	23.95	1.86	2.51	11.96	40.28
2015	22.23	0.00	2.96	12.00	37.19
<i>Overall Average Duration</i>					
All Yrs.	19.07	2.50	1.46	11.45	34.47
Class Period Through 2015	21.18	2.50	1.10	11.96	36.73
<i>Overall Median Duration</i>					
All Yrs.	20.00	0.00	2.00	12.00	32.00
Class Period Through 2015	20.00	0.00	0.00	12.00	35.00

Source: Zuffa contract data. Class Period begins December 16, 2010. The year in this table corresponds to the year in which contracts were signed.

90. The cumulative duration of contractual exclusivity as shown in this chart is economically significant, because (among other reasons), Fighter careers typically last only a few years. An internal Zuffa analysis prepared in 2014 estimated that a Fighter's overall average career length, measured from their first bout to their final bout with Zuffa, was approximately 2.5 years,

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

-62-

when considering those who fought for Zuffa at any time between 1993 and 2014.²⁵³ The same analysis finds that the average Fighter's career length declined from 6.4 years in 2001 to between three and four years in the mid-2000s, falling to approximately one to two years in more recent years.²⁵⁴ My own analysis indicates that the median career length for Zuffa Fighters—including bouts fought before and/or after the Fighter signed with Zuffa—is approximately 41 months, or about five bouts.²⁵⁵ Analysis performed by WME-IMG confirms that Zuffa's contract durations are even longer for top-ranked Fighters than for lower-ranked Fighters,²⁵⁶ and singles out the importance of Zuffa's long-term contracts for managing the "Risk of Fighter Compensation Inflation."²⁵⁷

91. Given the durations of exclusivity shown in Table 1, it is clear that even a single contract can easily span all or the vast majority of a Fighter's career—rendering that Fighter unavailable to fight for would-be rivals for his or her entire career even if Zuffa never engages in the practices described above to cause the Fighter to renew the contract. Fighters who renewed their contracts even once (let alone multiple times) could easily be made unavailable to would-be rivals for the entirety of their careers. Given Zuffa's ability to leverage the Challenge Conduct to renew and extend Fighter contracts, Zuffa had the ability to, and did, make its contracts effectively perpetual for those Fighters whom it wished to retain.

253. See ZFL-1376378-79. See also ZFL-2642993 (January 2008 email from the agent for Andrei Arlovsky, a former UFC Heavyweight Champion, stating that "It is extremely damaging to Andrei's career to be shelved for such a long period of time [more than one year]"); ZFL-2632955 (agent stating that "MMA fighters [] career primes are generally short"). Zuffa's corporate designee concurred that sitting out for 12 months is not a reasonable option given Fighters' typically short career durations. Hendrick 30(b)(6) Dep. V.I ("If [a fighter is] ready, willing, and able to fight and they want to fight, 12 months I would say is a time period that is significant for a fighter's career.").

254. See ZFL-1376378-79.

255. Calculated using data obtained from Sherdog.com.

256. WME-ZUFFA-00001150 at *11 (showing that champions have, on average, 6.5 bouts remaining in their contracts; Fighters ranked 1-5 have 5.5 bouts remaining on average; Fighters ranked 6-10 have 3.6 bouts remaining on average, and so on).

257. *Id.*

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

III. THE CHALLENGED CONDUCT WAS EXCLUSIONARY AND HARMED COMPETITION

92. Economists and antitrust scholars have identified criteria to determine whether conduct is exclusionary and harmful to competition, and these criteria can be informed by economic analysis. In this section, I lay out these criteria in detail, and I demonstrate that they are satisfied here.

93. In Parts III.A and III.B, I demonstrate that Zuffa has significant monopoly and monopsony power, using well-accepted “indirect” and “direct” methods of proof. Indirect proof of market power involves defining relevant product (and geographic) markets, demonstrating that Zuffa has high market shares within the relevant markets, and showing that substantial barriers to entry exist. Direct proof is more straightforward, and simply requires evidence that Zuffa has in fact exercised monopoly and/or monopsony power. It bears emphasis that product market definition is a tool to *infer* pricing power—that is, the ability to raise prices above competitive levels, or to suppress compensation below competitive levels. Because here we have direct evidence that Zuffa exercised monopoly and monopsony power, indirect evidence is of secondary importance.²⁵⁸

258. See, e.g., Jonathan B. Baker & Timothy F. Bresnahan, *Economic Evidence in Antitrust: Defining Markets and Measuring Market Power*, in Paulo Buccirossi, ed., *HANDBOOK OF ANTITRUST ECONOMICS* (2007) [hereafter, “Baker & Bresnahan”], at 15 (“Historically, in the antitrust world, market power has most commonly been identified through inference from a high market share. But direct evidence has increasingly become important as an alternative, in part because academic economists have developed a number of econometric approaches for measuring market power.”). Baker and Bresnahan also note that “quantitative methods of measuring market power through direct evidence have parallels involving the use of qualitative evidence.” *Id.* See also Aaron S. Edlin & Daniel L. Rubinfeld, *Exclusive or Efficient Pricing? The Big Deal Bundling of Academic Journals*, 72 *ANTITRUST L.J.* 119, 126 (2004) (“Market definition is only a traditional means to the end of determining whether power over price exists. Power over price is what matters...if power can be shown directly, there is no need for market definition: the value of market definition is in cases where power cannot be shown directly and must be inferred from sufficiently high market share in a relevant market.”). See also PHILLIP E. AREEDA, EINER ELHAUGE & HERBERT HOVENKAMP, 10 *ANTITRUST LAW: AN ANALYSIS OF ANTITRUST PRINCIPLES AND THEIR APPLICATION* 267, 325–28, ¶ 1758b. (1996 & Supp. 2003); see also PHILLIP AREEDA, LOUIS KAPLOW & AARON EDLIN, *ANTITRUST ANALYSIS: PROBLEMS, TEXT AND CASES* ¶ 344 (6th ed. 2004).

94. In Part III.C, I lay out the criteria for demonstrating that the Challenged Conduct foreclosed competition to a substantial degree, and I show that these criteria are satisfied here. In Part III.D, I show that the Challenged Conduct generated anticompetitive effects.

A. Indirect Evidence of Zuffa's Market Power

95. In general, a threshold requirement for demonstrating that the Challenged Conduct was exclusionary and harmful to competition is to show that the conduct at issue was undertaken by a firm with significant market power.²⁵⁹ As explained below, for my indirect proof of monopsony power, I define a Relevant Input Market of MMA Fighters, which is measured in two ways using industry-accepted databases. I also define a Relevant Input Submarket of "Headliners," consisting of all Fighters ranked one through fifteen according to industry-accepted databases in any of the ten major MMA weight classes.²⁶⁰

96. For assessing indirect proof of monopoly power, I define the Relevant Output Market as Live MMA Events in which the participating Fighters are in the Relevant Input Market.²⁶¹ For both the input and output markets, I define the Relevant Geographic Market as North America. The evidence shows that Zuffa enjoys dominant shares in the Relevant Output

259. See, e.g., Salop, *supra*, at 374 (noting that "monopoly and dominant firm markets" are where potentially exclusionary conduct "raise[s] the greatest concerns," although this conduct "can allow non-dominant firms that lack market power to achieve that power, particularly where parallel exclusion by multiple firms can lead to anticompetitive coordination."). See also IIIA PHILLIP E. AREEDA & HERBERT HOVENKAMP, *ANTITRUST LAW* ¶ 801, at 318 (2d ed. 2002); see also Einer Elhauge, *Defining Better Monopolization Standards*, 56 STAN. L.R. 253 (2003) [hereafter, "Elhauge"], at 257-261; 330-339.

260. I consider the Relevant Input Submarket to be the top 15 Fighters in each class weight class. I choose 15, as opposed to 10, 25 or some other number, because (1) FightMatrix.com only lists the top 15 for their "pound-for-pound" fighter ranking (<http://www.fightmatrix.com/historical-mma-rankings/generated-historical-rankings/?Issue=111&Division=-1>), (2) UFC's internal fighter rankings display the top 15 fighters per weight class (http://www.ufc.com/rankings?fb_comment_id=6086517324953#f17c6b2f929913), and (3) the top 15 are displayed in USA Today/MMA Junkie's ranking system (<http://mmajunkie.com/rankings>). Relatedly, as explained by Leon Margules, President of Warriors Boxing Promotion, boxers ranked in the top fifteen by one of the major sanctioning organizations are mandatory challengers for the title, and thus by definition championship-caliber. Margules Dep. at 85:17-86:13 ("Only ... if they are ranked in the top 15 will they qualify.").

261. This includes all Fighters in the Relevant Input Submarket as well, which is a subset of the Relevant Input Market.

Market, the Relevant Input Market, and the Relevant Input Submarket: Zuffa's (buying) share of the Relevant Input Market (however measured) ranges from 71 percent to over 99 percent from the start of the Class Period through June 2017; Zuffa's (buying) share of the Relevant Input Submarket ranges from 52 percent to over 90 percent since the start of the Class Period, and has exceeded 70 percent since late 2011; Zuffa's (selling) share of the Relevant Output Market has been approximately 90 percent by revenue since at least 2008. In addition, barriers to entry, including artificial barriers to entry and expansion created by the Challenged Conduct, are high. The combination of dominant market shares and barriers to entry allows me to conclude that Zuffa has had monopoly power in the Relevant Output Market and monopsony power in the Relevant Input Market and Submarket since at least the beginning of the Class Period.²⁶²

97. The DOJ's and FTC's *Horizontal Merger Guidelines* define a relevant antitrust (output) product market as a product or group of products such that a hypothetical monopolist that was the only present and future seller of those products could profitably impose a small but significant and non-transitory increase in price (the "SSNIP") over the competitive level.²⁶³ The SSNIP is normally taken to be five percent.²⁶⁴ If enough customers view some products outside a proposed product market as sufficiently interchangeable with products within the proposed market, the hypothetical monopolist could not profitably raise prices by the SSNIP. The forgone profits

262. See HERBERT HOVENKAMP, *FEDERAL ANTITRUST POLICY* 82-83 (3d ed. 2005). There is no consensus as to precisely how high a firm's market share must be to convey monopoly power. If an industry has a competitive fringe that imposes some competitive discipline on the dominant firm, many economists consider market shares in the range of 30 to 50 percent to be too low to infer monopoly power. See *MODERN IO* at 644. In this case, the fringe of the market is not competitive, as a consequence of the Challenged Conduct.

263. *Merger Guidelines* §4.1.1.

264. *Id.* §4.1.2 ("The Agencies most often use a SSNIP of five percent of the price paid by customers for the products or services to which the merging firms contribute value. However, what constitutes a "small but significant" increase in price, commensurate with a significant loss of competition caused by the merger, depends upon the nature of the industry and the merging firms' positions in it, and the Agencies may accordingly use a price increase that is larger or smaller than five percent.").

from the switching of consumers would exceed increased profits gained from the higher price paid by remaining customers.

98. When it comes to input markets, market definition proceeds in an analogous fashion for the analysis of monopsony power. In this case, a relevant (input) market consists of a product or group of products such that a hypothetical monopsonist that was the only present and future buyer of those products could profitably impose a small but significant and non-transitory *decrease* in prices (or wages) below the competitive level. In the buying context, market definition turns on “the alternatives available to sellers in the face of a decrease in the price paid by a hypothetical monopsonist.”²⁶⁵ If sellers enjoy “numerous attractive outlets for their goods or services,”²⁶⁶ then the hypothetical monopsonist would not be able to depress prices (or wages) significantly below competitive levels. Conversely, the exercise of monopsony power will be profitable when sellers have few competitive outlets to which to turn in response to a decrease in the price (or wage).²⁶⁷

1. The Relevant Input Market

99. Following the *Merger Guidelines*, I define the Relevant Input Market and Submarket based on the alternatives to which Fighters could reasonably substitute to counteract an exercise of monopsony power by Zuffa. As explained below, I provide two alternative metrics of the Relevant Input Market using two industry-accepted databases. The Relevant Input Submarket, a subset of the other markets, is also measured using industry-accepted databases:

²⁶⁵ *Id.* §12.

²⁶⁶ *Id.*

²⁶⁷ Given the nature of the Challenged Conduct—namely, foreclosure from a critical or must-have input—an alternative way to think about input market definition is from the perspective of potential rival MMA promoters: What is the narrowest set of Fighters that could be foreclosed via exclusionary agreements by a hypothetical monopsonist such that a potential rival MMA promoter would be materially impaired in its ability to compete effectively in the Relevant Output Market? Both frameworks lead to the same answer. *See, e.g.* Eric Cramer & Daniel Berger, *The Superiority of Direct Proof of Monopoly Power and Anticompetitive Effects in Antitrust Cases Involving Delayed Entry of Generic Drugs* 39 UNIVERSITY OF SAN FRANCISCO L. REV. (2004) at 112-113 (“[A] relevant product market is always defined in relation to the claims that give rise to the inquiry in the first place.”).

-67-

1. Under the Tracked measure, all Fighters fighting for an MMA promoter included in the FightMetric database (which “tracks” Fighter performance) are included in the Relevant Input Market. A hypothetical monopsonist over all Tracked Fighters could profitably exercise monopsony power, because an MMA promoter without Tracked Fighters would not be able to offer competitive matchups to advance a Fighter’s career.
2. Under the Ranked measure, the Relevant Input Market is expanded to include (1) all Fighters encompassed by the Tracked measure; and (2) any Fighter ranked in the FightMatrix ranking database. This includes Fighters ranked from 1 through 650 in any of the fourteen MMA weight classes in the FightMatrix database. The Ranked measure also includes ONE Championship, as explained below. A hypothetical monopsonist over all Ranked Fighters could profitably exercise monopsony power, because an MMA promoter without Ranked Fighters would be even less able to offer competitive matchups than an MMA promoter without Tracked Fighters.
3. Under the Headliner definition, the Relevant Input Submarket includes the top fifteen Fighters in any of the ten major MMA weight classes,²⁶⁸ as ranked by FightMatrix. A hypothetical monopsonist over all Headliners could profitably exercise monopsony power, because non-Headliners are, by definition, lower-ranked Fighters that would typically provide sub-optimal matchups for Headliners.

100. As explained below, athletes from combat-oriented sports outside of MMA such as boxing and wrestling are outside the Relevant Input Market, as are athletes from non-combat sports such as football or hockey. A market definition that encompassed Fighters from *all* MMA promoters would also be far too broad: The vast majority of these MMA promoters do not offer comparable competitive alternatives to which MMA Fighters could reasonably substitute to counteract an exercise of (buyer) market power by Zuffa. As explained below, the evidence indicates that even the most prominent non-Zuffa MMA promoters are at best distant substitutes to Zuffa from the perspective of Fighters.²⁶⁹ Nevertheless, both my Tracked measure and my Ranked

268. See Part I.A, *supra*. The Headliner definition omits the following minor weight classes: men’s strawweight, women’s featherweight, women’s flyweight, and women’s atomweight weight classes. However, these weight classes are included in the Ranked measure of the Relevant Input Market.

269. See also Part III.A.8, *infra*.

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

-68-

measure conservatively include Fighters from non-Zuffa MMA promoters, based on two alternative industry-accepted databases.

101. Combat-oriented sports outside of MMA, such as boxing, kickboxing, sumo wrestling, and professional wrestling, do not constitute sufficiently viable employment alternatives for MMA Fighters to defeat an exercise of monopsony power by a hypothetical monopsonist in the Relevant Input Market. The process of training to become an MMA Fighter is expensive and time-consuming. For this reason, Zuffa sometimes considered it superior to use lower-tier promoters to develop MMA talent instead of developing talent from scratch,²⁷⁰ and even acquired other MMA promoters, in part, to gain access to their Fighters.²⁷¹ Training to become an MMA Fighter is specific to MMA, and is not seamlessly transferrable to another individual combat sport. As one Zuffa investor presentation explains: “For a fighter to be successful in the UFC, one must be a master of multiple martial arts disciplines and maintain peak physical condition.”²⁷² A 2012 UFC management presentation states that “MMA is a Combination of Combat Sports,”²⁷³ and that “Fighters must be well-versed in a variety of different fighting disciplines.”²⁷⁴

102. Accordingly, the generalized fighting skills required for MMA competition are not seamlessly transferable with the more specialized skills required in (say) boxing. Indeed, Zuffa initially explored, but subsequently abandoned, a business model of mixing and matching different

270. *See, e.g.*, ZFL-1897652 at 694 (November 2013 text message exchange between Lorenzo Fertitta and Sean Shelby, Lorenzo asked “Should we buy Invicta” and Shelby responded “tough question... It would have to keep operating though. If Invicta went away it hurts me a lot. There just isn’t [sic] enough up-and-coming women yet.”).

271. *See e.g.*, ZUF-00031544 (Correspondence from Thomas Paschall to the Fertittas, White and others indicating that the acquisition of Pride is a “strategic/preemptive” one and that Zuffa “seriously contemplated acquiring them only to shut their business down and utilize the fighters in the UFC.”).

272. RAINE0000575 at 79. *See also* RAINE0018791 at 92 (“Different fighting styles provide distinct advantages for fighters and some styles are more effective against other certain styles. Generally, the most well-rounded fighters (masters of multiple disciplines) are the best”). *See also* Deposition of Joseph Silva at 296:2-5 (“Q. And eventually in the United States MMA developed into its own unique sport; is that right? A. Correct.”).

273. ZFL-2547712, at 24.

274. *Id.* at 27.

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

fighting styles (for example, pitting a judo-trained Fighter against a boxer).²⁷⁵ The highly publicized boxing match, on August 26, 2017, between undefeated (and previously retired) 40-year-old boxing champion Floyd Mayweather and Conor McGregor, the UFC lightweight (MMA) champion, was the exception that proves the rule, representing an opportunity unavailable to the vast majority of Zuffa Fighters (or boxers). Further, that the two fighters were boxing, and not engaging in an MMA bout (which includes, but is not limited to, boxing) is a further indication that MMA is a distinct sport that requires highly specialized training to compete at the highest levels.²⁷⁶

103. My conclusion that MMA is a distinct sport is even clearer for athletes in non-combat sports. For example, in response to a question regarding whether Zuffa would consider signing NFL player Greg Hardy to the UFC, Dana White stated: “It’s tough man. We’ve tried some of these things, and they don’t always work out. You’ve got to understand, a lot of these fighters have been training since they were kids, and this guy was training to play football and he became great at it. But fighting’s a whole other ball game...”²⁷⁷ Athletes who do attempt to transition from non-combat sports to MMA do not instantaneously compete at the level of UFC

275. ZFL-1838367 at 95 (“In 2001, three fans of the sport saw past the spectacle of this multi-disciplined form of combat to the true potential of MMA as a real sport where no one discipline would dominate, but rather in which athletes would need to be cross-trained in all disciplines to be victorious in the Octagon.”).

276. See, e.g., Jason Gay, *Mayweather and McGregor’s Mindless Summer Fight*, WALL STREET JOURNAL, June 15, 2017, available at <https://www.wsj.com/articles/mayweather-and-mcgregors-mindless-summer-fight-1497535595>. According to an editor of *Bloody Elbow*, although mildly competitive through the first nine rounds, the fight was more a spectacle, as McGregor was never close to a win. See, e.g., Mookie Alexander, *Six takeaways from Floyd Mayweather vs. Conor McGregor*, BLOODY ELBOW, Aug. 27, 2017 (“McGregor was never going to have the stamina to go the distance, and outside of the opening round counter uppercut and I believe a 9th round body shot (that looked like a low blow), Mayweather never seemed particularly fazed by his punches. Once Mayweather knew what he was getting from Conor after the first few rounds, he was willing to walk forward and land his own shots, and to me that was the obvious sign that McGregor was on borrowed time.”).

277. Zuffa’s Response to Plaintiffs’ Requests for Admission No. 37.

Fighters, but instead accumulate years of training and experience at smaller MMA promotions.²⁷⁸ A 2012 UFC Management Presentation states unequivocally that “[a]ll UFC fighters have previous combat sports experience.”²⁷⁹

104. A market definition that encompassed Fighters from *all* MMA promoters would clearly be too broad: Although there are hundreds of non-Zuffa MMA promoters, they do not offer comparable competitive alternatives to which MMA Fighters could reasonably substitute to counteract an exercise of market power by Zuffa. As explained below, nearly all non-Zuffa promoters are small regional outfits that have none of the top Fighters in any weight class and do not even seek to compete with the UFC for talent. Indeed, even the most prominent non-Zuffa promoters do not have access to a sufficiently deep pool of talented Fighters to provide competitive matchups to advance a Zuffa Fighter’s career, thus making non-Zuffa MMA promoters an inadequate substitute. Thus, even a (not so) hypothetical monopsonist controlling only Zuffa Fighters would be able to exercise significant monopsony power. Because the Relevant Input Market and Submarket encompass Fighters associated with non-Zuffa promoters, these market definitions are likely overly broad and thus conservative, as explained below.

105. MMA promoters other than Zuffa are “highly fragmented”²⁸⁰ and have not disrupted Zuffa’s dominant position. In the words of one MMA promoter, non-Zuffa MMA

278. For example, Wes Shivers played three games in the NFL for the Atlanta Falcons in 2000, but did not begin competing in MMA events until 2007. See <http://www.sherdog.com/fighter/Wes-Shivers-49521>; see also <http://www.pro-football-reference.com/players/S/ShivWe20.htm>. Shivers fought for small promotions with the exception of a single UFC exhibition bout (in 2009) and a single Strikeforce bout (in 2010). See <http://www.sherdog.com/fighter/Wes-Shivers-49521>. Similarly, Steve Bossé retired from the North American Hockey league to pursue a career in MMA in 2007, but did not make his debut in the UFC until 2015, after competing for years in minor promotions. See <http://www.ufc.com/fighter/steve-Bosse?id>; see also <http://www.sherdog.com/fighter/Steve-Bosse-22732>.

279. ZFL-2547712, at 27 (“All UFC fighters have previous combat experience. Many of the fighters are collegiate and Olympic champions. Most have extensive experience in smaller organizations before fighting in UFC.”).

promoters are to Zuffa what “AAA baseball is to MLB.”²⁸¹ Conversely, Zuffa is recognized by industry analysts as occupying “a premier ‘major league’ MMA platform.”²⁸² Thus, Fighters at non-Zuffa promotions lack access to a “deep roster of talented fighters,”²⁸³ which limits opportunities for career advancement outside of Zuffa (while simultaneously impairing would-be rivals).²⁸⁴

106. In an internal presentation from 2010 (when Strikeforce was at the peak of its popularity), Zuffa equated Strikeforce to a “Double-A”²⁸⁵ MLB team, and regional MMA promotions to “Farm Leagues.”²⁸⁶ In response to a question about whether the UFC planned to create a “minor league,” Dana White replied, “All of the other shows out there act as minor leagues for the UFC. Guys get their experience and build their confidence in the other shows and if they are successful enough we bring them into the UFC.”²⁸⁷ As Lorenzo Fertitta noted in March 2014:

280. ZUF-000162329-382 (October 2009 Deutsche Bank Report, “\$100,000,000 Incremental Term Loan”: 356 (“...the UFC holds the dominant market position within the sport and continues to do so even as a highly fragmented group of competitors have entered the market in an attempt to emulate UFC’s success”).

281. The full quote is as follows: “‘We believe the merger of Legacy Fighting Championship and Resurrection Fighting Alliance is an exciting and logical progression of the sport,’ Legacy FC President Mick Maynard stated. ‘As AAA baseball is to MLB, we will continue to develop the best prospects by providing a proving ground and a stage for the fighters to grow that is unrivaled in the sport.’” See <http://mmajunkie.com/2016/09/legacy-fc-and-rfa-merge-to-create-new-legacy-fighting-alliance-promotion>. See also ZFL-1500311 (In 2011, a concept document detailed the objective of establishing the Asia Fighting Championship to “serve as a development/feeder league to UFC[.]”); see also MARTIN0044963 at 63 (“Sponsorship Opportunities” pamphlet for Resurrection Fighting Alliance states that RFA “serves as a developmental organization for fighters who want to get into the ... UFC.”); MARTIN0035084 (May 1, 2014 “[RFA] is truly the minor league or development league for the UFC.”).

282. ZUF-000162329-382, October 2009 Deutsche Bank Report, at 361 (“the UFC’s ability to attract the world’s most talented MMA fighters gives it a premier ‘major league’ MMA platform.”).

283. DB-ZUFFA-00006389 at 439.

284. See Part III.C.1, *infra*.

285. See ZFL-2022954 at 57.

286. *Id.*

287. See ZUF-00284193; see also Zuffa’s Response to Plaintiffs’ Request for Admission No. 24 (On April 8, 2013 at the Global Speaker Series at the Stanford Graduate School of Business in Stanford, California, Dana White stated: “Nobody ever wants to look at themselves as a feeder league to the UFC. Deal with it. You’re all feeder leagues to the UFC, okay. I want them to exist and make money because those guys create the next talent that will end up in our organization someday.”).

-72-

[w]e're lucky in the sense that for any aspiring athlete that wants to become a fighter, we're at the top of the food chain. They want to, their goal is eventually to get to the UFC. So the talent pool is kind of coming to us so we kind of have the pick of the best fighters that are potentially out there[.]²⁸⁸

107. Zuffa regularly signs the champions from other promotions—after they have been successfully groomed.²⁸⁹ MMA promoters have included “Zuffa-out” clauses in their Fighter contracts, which release those Fighters from the contract if they are given an offer to fight for Zuffa.²⁹⁰ The presence of Zuffa-out clauses indicates that these promoters have forfeited any chance at competing with Zuffa for talent, opting instead to serve as an input provider for Zuffa.²⁹¹ In a February 24, 2014 interview, Titan FC CEO Jeff Aronson explained his strategy as follows:

288. Zuffa's Response to Plaintiffs' Request for Admission No. 33.

289. For example, Zuffa signed Conor McGregor from a promotion called Cage Warriors when McGregor was a two-division champion for the promotion. *See* ZFL-2699678 (February 15, 2013 4:08:32 PM Text from Sean Shelby to Lorenzo Fertitta, page 26 of 177). *See also* Mersch V.I Tr. 93:1-6 (stating that Justin Gaethje, who was a World Series of Fighting Champion in his weight class, left the World Series of Fighting for the UFC); ZFL-12517218 (On June 22, 2014, Zuffa sought to retain the services of Invicta Champ Lauren Murphy and negotiated with Shannon Knapp to have her released to enable her to fight in UFC; she fought for the UFC on August 16, 2014); ZFL-2483396 (On December 6, 2013, UFC signed M-1 Fighter Mairbek Taisumov after negotiating his release from M-1; Mairbek competed in UFC on January 4, 2014 and remained active in UFC); ZFL-2483439 (Mairbek's release letter from M-1); ZFL-2483345 (Zuffa signed Jumabieke Tuerxun after he was released from Legend FC on December 9, 2013). *See also* ZFL-1897652 at 751 (In a May 17, 2014 text message to Dana White, Legacy's owner writes “I wanted to run something by you. I may have to start some kind of buyout when y'all want to sign one of our guys that is already scheduled on a card. I have lost several fighters lately to you that were scheduled on one of my cards and it's killing me not only from a scheduling standpoint but also financially. The latest guy was fighting in four weeks for my title. Obviously I want to see them go to the UFC and I also don't want to create any problems. I'm not sure if you care either way but out of respect I wanted to at least get your feedback. I wouldn't be expecting the UFC to be responsible for it but someone would be.”). In a November 2013 text message exchange between Lorenzo Fertitta and Sean Shelby, Lorenzo asked “Should we buy Invicta,” and Shelby responds “tough question It would have to keep operating though. If Invicta went away it hurts me a lot. There just isn't [sic] enough up-and-coming women yet.” Lorenzo responds, “What do think about just buying all of Shannon's 115lb roster?” Shelby replied, “She reportedly currently has about 8 of the top 10 in that class so if we are doing a division right now or TUF [Zuffa's “The Ultimate Fighter” reality show] right now then we would need it if we want the perceived best. So it would depend on when we intend to open up the division. If I put the word out now that we want to do something next year, women would start planning their exit now.” *See* ZFL-1897652 at 694.

290. *See, e.g.*, ZFL-2531156 (every Titan FC Fighter has Zuffa-out clause); Aronson Dep. at 33:8-34:9 (same); ZFL-2491662 (Cage Fury Fighting Championship has Zuffa-out clauses in “all of our agreements”). *See also* ZFL-2544560 (Jungle Fight permitted Fighters leave for UFC: In March 2015, Joe Silva wrote “If Koscheck doesn't work out I can put in current Jungle Fight champion Elizeu Zaleski Dos Santos. He is scheduled to fight in their main event March 28 in Sao Paulo but they are willing to let me have him. They need to know soon though so they can replace their main event.”).

291. At his deposition, Joe Silva testified that “numerous promotions ask[ed] to be official feeder shows for the UFC. That is a benefit to them.” Silva Dep. 143:7-9.

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

-73-

Everybody that has tried to challenge the UFC has wound up on their butt. Nobody has been able to do it. No one is going to take on Zuffa and win at this point. It's just not going to happen, and I have no aspirations to do that... I give every single fighter a 'Zuffa Out' clause... So yes, all of my guys have the ability to leave for the UFC, because every kid training in MMA has the dream of being a UFC champion. I want to be part of the facilitation of helping these guys get the fights they need.²⁹²

Similarly, in April 2011, Zuffa drafted an internal "cooperation framework" memo between the UFC and Legend FC, the purpose of which appears to have Legend FC serve as an MMA minor-league training ground for potential UFC Fighters, and to give UFC exclusivity over promising prospects developed within Legend.²⁹³ Many MMA promoters have also sold or licensed their content to Zuffa's proprietary subscription streaming service ("Fight Pass"). A promoter who has entered into an agreement with Zuffa to license or sell their content to Zuffa is unlikely to compete aggressively against Zuffa for talent.²⁹⁴

108. To be conservative, I define the Relevant Input Market to include certain Fighters from certain non-Zuffa promoters, based on data from industry-accepted tracking and ranking databases. The first of these databases is FightMetric, which tracks the round-level fighting

292. See ZFL-2531156. In April 2015, Titan FC and Zuffa began negotiating a more explicit partnership such as the one Zuffa entered into with Invicta, which would include Zuffa rights to Titan FC footage. See ZFL-2531156.

293. In exchange for support and training for Legend FC from the UFC, the UFC "gets sales rights to Legend content outside of Asia[.]" a "50/50 revenue split" and "UFC signoff on all Legend media deals to ensure complementary with UFC deals." In addition, "Legend shall work exclusively with UFC (no other promotions) on these initiatives" and "UFC has first rights to recruit any Legend fighters. Legend fighters may not fight in any other promotions outside of Legend (and their home countries) without UFC approval." ZFL-2554757 (email); ZFL-2554758 (draft cooperation framework).

294. See <https://www.ufc.tv/category/fightlibrary>. Indeed, Zuffa appears to have negotiated exclusive licenses to use the vast majority of the content it puts on Fight Pass, leaving promoters with few other options for broadcast revenue. See ZFL-1704928 (a May 2015 spreadsheet listing MMA Library licensing status). For example, Titan FC's exclusive license agreement with Zuffa pays Titan \$75,000 per show put on Fight Pass; the payment increases only if Zuffa exercises an option to extend the contract after the third year. Aronson Dep. at 82:14-83:10. See also Aronson Ex. 13, 14 (Fight Pass License Agreement for Titan FC). This gave Titan FC a strong incentive not to compete directly against Zuffa for talent or do anything else that might jeopardize their "excellent relationship with the UFC." Aronson Dep. at 51:9-12; 92:8-93:16. Indeed, as Dana White explained the strategy in a January 2014 text to Lorenzo Fertitta: "Our deal should be just like our fight pass deals we should have locked up all the rights to all the famous fighters like Ali, Foreman, etc[.] We should start thinking about literally owning fighting/combat sports[.]" ZFL-2699678.

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

-74-

statistics of Fighters associated with the “most prominent [MMA] organizations in the world,”²⁹⁵ and is the “the official statistics provider to the UFC.”²⁹⁶ As noted above, FightMetric data have been used in prior academic work.²⁹⁷ In addition, Joe Silva testified that FightMetric data were perceived in the industry as “very credible.”²⁹⁸ The second database used to measure the Relevant Input Market is FightMatrix (not to be confused with FightMetric), which is a global MMA Fighter ranking system that ranks MMA Fighters by weight class, including up to 650 Fighters per weight class.²⁹⁹ FightMatrix is recognized by Zuffa itself as an authoritative source of MMA Fighter rankings.³⁰⁰

109. Under the “Tracked” measure, all Fighters who fought for an MMA promoter included in the FightMetric database (which “tracks” Fighter performance) are (conservatively) included in the Relevant Input Market. In addition to the MMA promoters covered in the FightMetric data, I conservatively designate all Fighters associated with MMA promoters acquired by Zuffa in this measure of the input market.³⁰¹ As seen in Table 2, the Fighters covered under this measure of the Relevant Input Market include those affiliated with Affliction, Bellator, Dream, EliteXC, Pride, Strikeforce, UFC, World Extreme Cagefighting, and World Fighting Alliance. As

295. E-mail from Remi Genauer, Director, FightMetric, to Economists Incorporated (Nov. 19, 2016, 19:48 ET).

296. FightMetric, About the Company, available at <http://www.fightmetric.com/company>. See also Trevor Collier, Andrew Johnson & John Ruggiero, *Aggression in Mixed Martial Arts: An Analysis of the Likelihood of Winning a Decision*, in 4 VIOLENCE AND AGGRESSION IN SPORTING CONTESTS, SPORTS ECONOMICS, MANAGEMENT AND POLICY SERIES, 97-109, 98 (Springer 2011).

297. See Part I.B.

298. Silva Dep. at 162:19-164:18.

299. According to its website, the FightMatrix ratings system “takes an unbiased, objective look at all available professional MMA results from day 1 to the present.” See <http://www.fightmatrix.com/faq/>.

300. See Deposition of Javier Vasquez, February 14, 2017 at 67, Exhibits 42-44.

301. Record evidence indicates that Zuffa’s acquisitions targeted perceived rivals, or promoters viewed as potential rivals. See Part II.A (summarizing Zuffa’s horizontal acquisitions). This definition is likely over-inclusive: A potential future rival is not the same as an actual rival. In addition, there is evidence that Zuffa sometimes acquired rivals to “to serve as a venue in which to groom up-and-coming talent”—that is, to serve a more complementary role. See Ken Pishna & Ivan Trembow, *UFC Buying World Extreme Cagefighting*, MMA WEEKLY, Dec. 11, 2006.

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

-75-

seen below, with the exception of Bellator, all of these promoters have gone out of business or been acquired by Zuffa.

TABLE 2: PROMOTERS ASSOCIATED WITH FIGHTERS IN THE RELEVANT INPUT MARKET
(MEASURED BY TRACKED FIGHTERS)

Promoter Name	In FightMetric?	Owned/Acquired by Zuffa?	Final Year
World Extreme Cagefighting	X	X	2006
World Fighting Alliance		X	2006
Pride Fighting Championships	X	X	2007
EliteXC ³⁰²	X		2008
Affliction	X	X	2009
Strikeforce	X	X	2011
Dream	X		2012
Bellator	X		N/A
UFC	X	X	N/A

110. The second, “Ranked” measure expands the Relevant Input Market relative to the first measure: The Ranked measure includes (1) all Fighters encompassed by the “Tracked” measure; and (2) any Fighter ranked in the FightMatrix database. In addition, the Ranked measure also includes the Asian MMA promoter ONE Championship. ONE Championship has a large presence in Asia, and, according to Zuffa, is the only international MMA promoter that potentially competes with Zuffa for talent.³⁰³ Including ONE Championship is conservative, given that ONE Championship has made only limited inroads outside of Asia.³⁰⁴ According to FightMatrix, even

302. Although EliteXC was not directly acquired by Zuffa, its parent, Pro Elite, was acquired by Strikeforce shortly after EliteXC ceased promoting bouts. *See* Coker Tr. 23:4-8 (“We went out, we bought Pro Elite, and with buying Pro Elite came 40, 50 top fighters from around the world.”). Thus, Zuffa ultimately realized the benefits of that acquisition when it acquired Strikeforce in 2011.

303. *See* Part III.A.3, *infra*.

304. For example, only a single Fighter from ONE Championship appears among the 165 slots delineating top-ranked MMA Fighters in the *USA Today/MMA Junkie* ratings. *See* <http://mmajunkie.com/rankings> (accessed April 18, 2017).

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

-76-

an undefeated record in ONE Championship does not necessarily advance a Fighter's rank, due to a lack of high-quality opponents.³⁰⁵

111. It bears emphasis that both the "Tracked and "Ranked" measures of the Relevant Input Market are quite conservative, given that even the most prominent non-Zuffa promoters are inferior substitutes from the perspective of Fighters. The list of MMA promoters associated with Fighters included in the Ranked measure includes the World Series of Fighting, M-1 Challenge, King of the Cage, and many others; the list of MMA promoters varies substantially over time: As of 2001, there were 83 MMA promoters. By 2009, there were 429. As of 2016, there were 213 MMA promoters associated with Fighters included in the Ranked measure.³⁰⁶

112. Under the "Headliner" measure, the Relevant Input Submarket includes each of the top fifteen Fighters in any of the ten major MMA weight classes tracked in the *USA Today/MMA Junkie* rankings, according to the FightMatrix ranking database.³⁰⁷ There are no close substitutes for Headliners. As explained in Part I.A, MMA promoters rely on top-ranked Fighters at the Top of the Card to draw audiences and viewers to Live MMA Events; for the same reason, fighting at the Top of the Card is the primary career objective for an MMA Fighter. This objective can be achieved only by defeating other highly-ranked Fighters.³⁰⁸

113. Additional evidence confirms that Zuffa relies heavily on Headliners to fill the Top of the Card: In 129 of the 159 UFC PPV events from 2005 to May 2017, both of the Fighters at the

305. FightMatrix notes that "Fighters not in the UFC do not always have access to top competition. This can lead to a gradual decline in rankings," for example, "#33 Ben Askren has gone undefeated in One Championship, but his ranking points have fallen from 376, when he signed, all the way down to 169." Richard Mann, "Ranking Points for Highest Ranked Fighter by Promotion" *FightMatrix* (August 3, 2016).

306. To clarify, not all Fighters affiliated with these promoters are included; only those that are ranked by FightMatrix are in the Relevant Input Market.

307. The FightMatrix rankings are used instead of the *USA Today/MMA Junkie* rankings because the former are consistently available over time.

308. Silva Dep. 129:10-21 ("Beating guys with crappy records won't convince anyone [a fighter is] ready for the big leagues."); Margules Dep. at 85:17-86:13 ("Only ... if they are ranked in the top 15 will they qualify.").

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

-77-

Top of the Card were Headliners. At least one of the Fighters at the Top of the Card was a Headliner in 158 of these 159 events.³⁰⁹ Similarly, a *Sports Business Journal* analysis cited by UFC personnel concluded that:

History tells us that for a pay-per-view to do big numbers, it needs marquee names: Chuck Liddell, Brock Lesnar, Rampage Jackson and Georges St-Pierre. Even if you don't know an arm bar from a rear naked choke, you've probably heard of those four, who from 2006 to today carried the highest pay-per-view averages of any main event fighter in MMA. During that span, those four fighters [] accounted for 17 of the 25 highest-selling pay-per-views. They held 11 of the top 14 slots, eight of the top 10, and six of the seven events that have exceeded a million...Exciting fights and a strong UFC brand can drive ratings and sell tickets, but *sales estimates from the last nine years make it clear that it's the name at the top of the card that sells pay-per-views...* "Stars matter when you look at buys, and that's not exclusive to the UFC," said Alex Kaplan, vice president of revenue and product marketing at DirecTV, who is responsible for pay-per-view at the company.³¹⁰

The significance of Headliners to Zuffa is further confirmed by Joe Silva's use of consensus rankings in 2011—showing that UFC Fighters accounted for the majority of the top twenty-five and top ten Fighters in each of seven weight classes—to demonstrate the UFC's dominance to Zuffa management.³¹¹

114. The Headliner measure of the Relevant Input Submarket is conservative because it includes Fighters associated with many non-Zuffa promoters. The list of MMA promoters associated with Fighters included in the Relevant Input Submarket includes Affliction, EliteXC, Gladiator Challenge, King of the Cage, Pancreas, and more than 250 others from 2001 to 2016. As of 2001, there were 47 MMA promoters associated with Fighters included in the Relevant Input Submarket. By 2009, there were 44. As of 2016, only six remained: UFC, Bellator, Invicta, M-1 Global, Titan Fighting Championship, and the World Series of Fighting.

309. Over this time period, more than 80 percent of Zuffa's Event Revenue was derived from PPV events.

310. WME_ZUFFA_00031950-60 (emphasis added).

311. ZUF-00085896-901 (2011 e-mail from Joe Silva to Dana White, Lorenzo Fertitta, and Sean Shelby, showing that UFC Fighters account for the majority of the top twenty-five and top ten Fighters in each of seven weight classes; subject line reads "We Own MMA").

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

2. The Relevant Output Market

115. I define the Relevant Output Market as Live MMA Events in which the participating Fighters are in either the Relevant Input Market (however measured) or the Relevant Input Submarket. In the Relevant Output Market, MMA Promoters are the sellers; their customers include viewers, cable networks, broadcast networks, and sponsors. As in other professional sports, the demand for Live MMA Events is ultimately driven by audience preferences. As explained below, record evidence indicates that Live MMA Events are a separate product market, and that audiences do not view other combat sports (such as boxing or professional wrestling) to be reasonably close substitutes. To the contrary—as Zuffa and third parties recognize—Live MMA Events are perceived as a separate category of sports entertainment, just as games produced by Major League Baseball are separate from those produced by the National Football League.³¹² Finally, as explained below, Live MMA Events featuring Fighters not within either the Relevant Input Market or the Relevant Input Submarket are not reasonable substitutes for events in the Relevant Output Market, and are therefore excluded from the Relevant Output Market.

116. Record evidence indicates that the degree of competition between boxing and MMA is limited, with low crossover between audiences.³¹³ Industry analysts have noted that

312. See Part III.A.8, *supra* (showing that WME-ING viewed the UFC as a league unto itself prior to acquiring Zuffa, and that Zuffa considers itself a separate league, comparable to MLB, NFL, etc.).

313. See ZFL-2528642: 3/24/2015, Jackie Poriadjian to Gary Cook, re: ESPN signing Premier Boxing Championships: “. . . historically not big cross over audience.” See also ZFL-1096310: 3/26/2015, Doug Hartling to Jackie Poriadjian in response to Zuffa concerns over ESPN signing Premier Boxing Championships (PBC) to weekly programming: “Of the total audience that tuned in to UFC Fight Night Boston (4,386,000), 507,000 (or 11.5%) also tuned in to PBC on NBC on March 7. “Of the total audience that tuned in to UFC Fight Night Stockholm (5,771,000), 1,016,000 (17.6%) also tuned in to PBC on NBC on March 7. See also ZFL-2477398: 3/5/2013: “[O]f the HHs that bought the latest Mayweather fight, only 9.4% purchased a UFC event in the UFC 154 – present window. This indicates a much lower crossover among their subscribers than the latest Crop research shows. Of this group, only 2.3% purchased UFC 160.” ZFL-2477398, at 2. See also ZFL-2528842: 5/10/2012, Caren Bell to UFC Executives - Analysis of a ratings disaster for a UFC event on FOX (“The show did 34% below what COPS was doing this season in the same time slot. . . . It was the lowest rating for a network TV MMA show in history”). On whether a PPV boxing event (Mayweather/Cotto) that night, or other sporting events, affected UFC’s ratings: “The boxing is not an

boxing is a “very strategic sport that requires discipline and self-control in fighting style,” whereas the coveted 18-to-34 male demographic (the primary MMA audience), are seeking more “knockout” moments and “raw” hand-to-hand combat.³¹⁴ Boxing is differentiated from MMA along several dimensions, including predictability³¹⁵ and weight-class gradations. For most UFC events, there is no near-term, marquee boxing event to which viewers could substitute, even if they were inclined to do so. Marshall Zelaznik, Zuffa’s Chief Content Officer, testified that Zuffa’s exclusive venue clauses were intended to “avoid confusion with other mixed martial arts promoters,” but that “[w]e didn’t believe that there would be confusion around a boxing event or wrestling or judo[.]”³¹⁶

excuse, only because Manny Pacquiao fought Juan Manuel Marquez and did 1.41 million buys on PPV the same night as Cain Velasquez vs. Junior Dos Santos became, by far, the most-watched MMA fight ever in U.S. television, with the fight itself doing 9.5 million viewers between FOX and Fox Deportes.” ZFL-2528842, at 2. “8% said they skipped it to watch the Mayweather fight.” ZFL-2528842, at 3. “5% said they were watching sports other than boxing that night.” ZFL-2528842, at 3.

314. DB-ZUFFA-00006389 at 438 (“Boxing is a very strategic sport that requires discipline and self-control in fighting style. They are required to maintain their stamina for 12 rounds and as a result, don’t always engage in ‘all-out punching contest.’ While that may appeal to older fans, who might have grown up watching Mike Tyson and Evander Holyfield, the newer generation of fans are seeking more ‘knockout’ moments and ‘raw’ hand-to-hand combat. The 18-34 male audience is the primary demographic of MMA and also happens to be the most coveted demographic in advertising[.]”).

315. DB-ZUFFA-00006389 at 438 (“Boxing is predictable and the fighting is governed by a long list of rules. Whereas the diversity of styles used by fighters in MMA makes the sport far more interesting, explosive and exciting to watch. As MMA fans continue to point out, a fighter in boxing only has two weapons but a fighter in UFC has four[.]”).

316. Deposition of Marshall Zelaznik, February 8, 2017 at 65:17-66:9 (“Q Would you say boxing is comparable to mixed martial arts?...THE WITNESS: In the sense that it’s combat, it’s similar. In the style of fighting they use, it’s not similar. Q... Would you say that there was not a risk of confusion between mixed martial arts and boxing?...THE WITNESS: I think our concern about confusion was related to MMA. We didn’t believe that there would be confusion around a boxing event or wrestling or judo[.]”). See also Mossholder Deposition (November 30, 2016), at 91:16-24 (“Q. Did Zuffa’s ability to negotiate exclusivity language such as this in its contracts change at all over time? A. Standard language changed in the early days. Consumer confusion could include boxing, it could include WWE. As -- as the sport became more mainstream and understood as what the product is, there was less consumer confusion and so that language changed.”) *Id.* at 95:13-23 (“A. Consumer confusion, again, as stated earlier; consumer confusion around boxing and WWE was -- in the infancy of the UFC was an issue. And as we have grown in -- in scale and brand awareness, it is less of an issue today. Q. So today Zuffa’s not worried about consumer confusion between MMA and boxing or wrestling? A. It’s less. We still have concerns, but it is less of a concern than it was, you know, a decade ago.”). Mr. Mossholder served as Executive Vice President for Global Marketing Partnership for Zuffa beginning in 2011.

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

-80-

117. Professional wrestling such as World Wrestling Entertainment (“WWE”) differs qualitatively from MMA in that the former consists of staged events with preordained outcomes. Unlike MMA Fighters, professional wrestlers are “trained stunt performers,”³¹⁷ with a format that “eschews real competition for scripted plotlines.”³¹⁸ MMA promoter contracts reflect a lack of competition with professional wrestling. For example, a 2007 agreement between Zuffa and the Endeavor Agency prohibits Endeavor from representing other MMA businesses, but explicitly allows Endeavor to “continue to represent World Wrestling Entertainment.”³¹⁹ Similarly, a television license deal between WEC and Setanta Australia contains exclusivity language, but the language does not apply to WWE (or to boxing).³²⁰ MMA has also exhibited much faster growth and greater profitability than professional wrestling, indicating that wrestling likely could not lure a sufficient number of MMA viewers/advertisers to defeat a price increase by a hypothetical monopoly provider of Live MMA Events.³²¹

118. Record evidence also indicates that customers view other, non-combat sports as complements to Live MMA Events, rather than economic substitutes. Part of a 2011 agreement between Zuffa and Fox included “intensive cross-promotion between UFC and FOX’s

317. Andrew Brennan, *Professional Wrestlers Must Realize They Can’t Enter The MMA Or The UFC; It’s Not A Scripted Fight*, FORBES, Oct. 31, 2016.

318. Chris Smith, *UFC Vs. WWE: How Much More Is Real Fighting Worth?*, FORBES, July 12, 2016.

319. “Endeavor shall not represent any companies which own or control mixed martial arts businesses which directly compete with [Zuffa’s promotions, Pride, WEC, and UFC]. By way of example only, businesses which Endeavor could not represent during the term would include K-1 or Elite XC, but Endeavor may continue to represent World Wrestling Entertainment.” See ZFL-2613931 at 32 (Pride agreement); ZFL-2613939 at 40 (WEC Agreement), ZFL-2613946 at 47 (UFC Agreement).

320. See ZFL-2614687 at 88.

321. Chris Smith, *UFC vs. WWE: How Much More Is Real Fighting Worth?*, FORBES, July 12, 2016.

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

-81-

programming, likely including NFL, NASCAR and MLB broadcasts.”³²² Economic complements cannot constrain the pricing of each other, and thus are not part of the same product market.³²³

119. Finally, Live MMA Events featuring Fighters outside the Relevant Input Market are not reasonable substitutes for Zuffa events. Non-Zuffa MMA promoters are poor substitutes to Zuffa from the perspective of Fighters.³²⁴ The same holds true from the perspective of audiences: As explained in Part III.C.1 (below), non-Zuffa promotions lack access, among other things, to “the talent necessary to stage a successful event,”³²⁵ which makes them inferior substitutes from the perspective of audiences. It bears emphasis that this definition of the Relevant Output Market is conservative, for the same reason that my definition of the Relevant Input Market is conservative: Events promoted by even the most prominent non-Zuffa promoters are distant substitutes for Zuffa.

322. DB-ZUFFA-00006389 at 392.

323. *See, e.g.*, Merger Guidelines §4.1.1 (showing that product markets are defined using substitutes, not complements).

324. *See* Parts III.A.1; III.A.8, *supra*.

325. DB-ZUFFA-00006389 at 392.

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

3. The Relevant Geographic Market

120. According to basic principles of antitrust economics, the Relevant Geographic Market is defined using a SSNIP test directly analogous to that used in product market definition.³²⁶ In the case of geographic markets, the SSNIP test asks whether a hypothetical monopolist within a given geographic region could profitably impose a small but significant and non-transitory increase in price above competitive levels—or, in the case of a monopsonist, a decrease in the price (or wage) below competitive levels.

121. With respect to the Relevant Output Market, I define the relevant geographic market as encompassing Live MMA Events in the Relevant Output Market broadcast in North America. Viewer substitution outside of the North American market is limited by time-zone differences,³²⁷ as well as by local or regional fan bases, which drive demand for Live MMA Events.³²⁸ Victor Cui, CEO and owner of ONE Championship, an MMA promoter based on Singapore, stated in a 2016 interview that “UFC has got a 90-percent market share in the [United] [S]tates. We’ve got a 90-percent market share in Asia... [W]e’ve catered to our audience—the

326. *Merger Guidelines* §4.2.

327. DB-ZUFFA-00007249 at 54 (“Global audiences are dominated by viewership in the US for a majority of time slots. The US has the highest audience for all time slots in which the event was televised in the US.”), and at 56 (“10am isn’t optimal for Europe and has the largest negative impact on the US. 12:00/13:00 are optimal for European prime time but have the largest negative impact on Asia.”).

328. RAINE0018791 at 804 (“International rights fees are driven primarily by growth of the UFC fan base in that region. This fan base is exemplified through TV ratings, social media following, and media coverage of events... Local talent plays a large factor in the speed of a market’s development, to this end the UFC invests in talent through two primary vehicles, Fighter Development Programs and local created content such as international versions of *The Ultimate Fighter*.”). See also ZFL-2235745 at 56. According to a survey done by Applied Analysis for Zuffa, out of all attendees at UFC 94, 71.8% were from the United States, and 27.5% were from Canada. The presentation notes that one of the Fighters in the event originated from Canada, which is assumed to have materially impacted the distribution of the origin of respondents. *Id.* See also ZFL-2554757; ZFL-2554758 (comments on an April 2011 “cooperation framework” memo between the UFC and Legend FC state that “we should limit them to grow sport in China (that is all they should be focused on in my mind—don’t want them branching out beyond that for now)...”). See also ZFL-2689504 (When Zuffa negotiated exclusivity provisions with local broadcasters abroad, Zuffa sometimes allowed an exemption for events “held and produced” in the local country. For example, in a 2007 negotiation with NTV-Plus, a Russian broadcaster, Zelaznik noted “I think this should be OK as the intent is to allow them to air Russian based promotions not US/UK based.”). This suggests that Zuffa was not concerned about brand confusion between Russian promoters and U.S. promoters.

Asian MMA fans who have been pining for authentic Asian MMA action and on a world-stage[.]”³²⁹ Conversely, Cui stated in another interview that Fighters in the mold of UFC superstar Conor McGregor were not suited to the Asian market.³³⁰

122. Starting with a single event in 2011, ONE Championship has grown rapidly in Asia, and is scheduled to host 24 events in 2017.³³¹ Its website touts its “90% market share in Asia,”³³² “90% of the best world champions and fighters in Asia,”³³³ and claims an “avid MMA fan base across top Asian markets” of approximately 563 million.³³⁴ As ONE Chairman Chatri Sityodtong stated in an interview, “[w]e are focused on unearthing the greatest martial arts stars in each country, so every country has a world champion, one of the best martial artists in the world to root for that really links to their own history, heritage and their values....”³³⁵ Sean Shelby, a matchmaker with the UFC, also stated that fight promotions in Asia could have “their own set of

329. James Edwards, *ONE Championship and UFC is the story of East and West in the MMA market*, INDEPENDENT, April 19, 2016 (“UFC has got a 90-percent market share in the [United] [S]tates. We’ve got a 90-percent market share in Asia...[W]e’ve catered to our audience - the Asian MMA fans who have been pining for authentic Asian MMA action and on a world-stage, to be showcased in front of potentially a billion viewers worldwide.” When Cui referenced “the 1 billion viewers, he was speaking in part about the new TV deal they [ONE FC] announced last weekend with the largest TV broadcaster in the Philippines, ABS-CBN.”).

330. Nick Baldwin, *CEO Victor Cui explains why Conor McGregor isn’t suitable for ONE Championship*, BLOODY ELBOW, May 22, 2017, available at <http://www.bloodyelbow.com/2017/5/22/15677574/ceo-victor-cui-explains-why-conor-mcgregor-isnt-suitable-for-one-championship-mma-ufc-news> (“A big part of what drives the spirit of ONE Championship is really just the belief that martial arts makes the world a better place. Of course want it to be successful business, of course we want to continue to grow in a successful business enterprise. That philosophy of we’re making the world a better place permeates throughout the entire organization. I think it’s something our fans really appreciate in Asia.”). According to ONE Championship chairman Chatri Sityodtong, McGregor’s demeanor could be problematic for an Asian promoter. *Id.* (“Let’s say we had a press conference in China and he [McGregor] threw a water bottle, I would go to jail. They’d put me in jail. I’m not kidding around.”).

331. See Tony Mogan, *ONE Championship: Asia’s MMA powerhouse plays up its differences to UFC in battle for supremacy*, INTERNATIONAL BUSINESS TIMES, Jan. 21, 2017 (“UFC’s 4bn takeover symbolised the huge rise in MMA in 2016 but that growth has not spread to the East. In 2014, they held five events in the continent. In 2015 it shrunk to three. In 2016, it was just one. None are on the horizon for 2017. ONE, meanwhile hosted a single event in 2011 while in 2017 it will be 24.”).

332. See <https://onefc.com/about-one/>.

333. *Id.*

334. *Id.*

335. See Mogan, *supra*.

stars.”³³⁶ Similarly, Joe Silva testified that foreign Fighters must compete in the United States before they can achieve stardom here, and that there exist different fan bases in different geographies, with differentiated preferences.³³⁷

123. A hypothetical monopolist imposing a SSNIP on Live MMA Events in the Relevant Output Market broadcast within North America would not be constrained by viewer substitution to Live MMA Events broadcast outside of North America. For example, although the price of a UFC PPV event broadcast in North America is in the range of \$50 or more, ONE Championship has sold online access to its own PPV events in North America for \$9.99, beginning at least as early as 2013,³³⁸ and continuing into 2017.³³⁹ That Zuffa can charge North American customers at least five times as much as One Championship indicates that the Relevant Geographic Market for Live MMA Events is not global.³⁴⁰ ONE Championship has made only limited inroads outside Asia; it

336. Deposition of Sean Shelby, April 12, 2017, at 195:9-196:19. (“Q: In what way [is Pancrase different from promotions like RFA]? A: I would say it’s a bit different in that, you know, it’s a fight promotion based out of Japan rather than something out of, you know, this part of the world, North America. Q: So the difference between Pancrase and RFA is geographic? THE WITNESS: Yeah, no, I didn’t – it would be a little bit different, because they could have their own set of stars over there that drive it, and so they might have a fighter that’s worth something to them. I don’t know, but in that area. And so again, when we talked about earlier, stars come in all different shapes and sizes, and over there they might have somebody that’s a star to them. So it’s a little bit different thing.”).

337. Deposition of Joseph Silva at 52:12-20 (“Q. So in your opinion, American fans are all things equal more interested in fighters that are known to Americans? . . . THE WITNESS: I think that’s wherever you’re at. I think in Japan they’re more interested in the fighters in Japan. You’re interested in who you’re familiar with until you become familiar with them.”). *See also* Silva Dep. at 42:7-13 (“A. . . if you only fought in Japan, you were not a big name to anybody in the United States”); *id.* at 294:4-8 (“Q. I see. And success, say, in China or the Philippines wouldn’t translate to U.S.; is that right? A. Correct or Korea or anywhere else it’s all very specific. Q. So the business and the industry is very culture or country specific in your opinion? A. Yeah, it can be.”).

338. Riley Kontek, *4 Reasons MMA Fans Should Pay Attention to One FC*, BLEACHER REPORT, May 30, 2013 (“With UFC pay-per-views hovering around the \$50 range, wouldn’t it be nice to get a high-quality pay-per-view streaming live for something more affordable to the average Joe? Well, One FC will be running its pay-per-view this weekend for \$9.99 from their website.”).

339. *See* <https://onefc.com/livestream/> (“Catch all the events live with ONE Championship’s official livestream. Purchase the HD livestream now at only US\$9.99 (service charges apply). Replays are available up till 14 days after the conclusion of the live event. ONE: KINGS OF DESTINY livestream starts at 8.30PM, Manila time [8:30AM EDT] (Main card).” (accessed April 19, 2017)).

340. Conversely, record evidence indicates that Zuffa charges lower ticket prices and lower PPV prices outside of North America. *See* DB-ZUFFA-00006389 at 426 (“Ticket prices in Brazil are not as high as the ones in North America. Prices for PPV buys are also not as high in Brazil as in North America. While PPV subscriptions are higher in Brazil, they are not high in North America for Brazilian fights as it is more difficult to market a fight in Brazil in

accounts for just one out of 165 top-ranked MMA listings in the *USA Today/MMA Junkie* ratings.³⁴¹

124. With respect to the Relevant Input Market and Submarket, I define the relevant geographic market as North America. As explained above, although ONE Championship is outside of the Relevant Geographic Market, I conservatively include it in the Ranked measure of the Relevant Input Market.

125. For the Relevant Input Market, the boundaries of the Relevant Geographic Market turn on the extent to which MMA Fighters would substitute towards MMA promoters in different geographies in the event of a small but significant and non-transitory decrease in Fighter compensation below competitive levels. A 2014 Zuffa document summarizing all of the “International MMA Leagues...we keep an eye out to scout for talent,”³⁴² indicates that international promoters are not “actively competing for talent with UFC,”³⁴³ but instead grant their Fighters “UFC-out” clauses in the event that a Fighter has the opportunity to compete in the UFC.³⁴⁴ Accordingly, Fighters associated with most (if not all) international promoters are properly excluded from the Relevant Geographic Market.

126. The document states explicitly that the only exception is ONE Championship, which Zuffa identifies as the “only [international] league we consider a ‘competitor’ from that

North America due to reduced media coverage. The above results in lower margins in the Brazil market versus North America.”).

341. See <http://mmajunkie.com/rankings> (accessed April 18, 2017).

342. ZFL-0885147-49 (In 2014, Zuffa drafted a document summarizing all of the “International MMA Leagues...we keep an eye out to scout for talent.” The document notes that “[w]e consider the leagues listed below as the aggregators of talent in the country/region. There are smaller leagues below them, but any good talent ends up in the ones outlined below. Most of the leagues listed below have “UFC out” in their fighter contracts, meaning if UFC wants to sign any of their fighters, the fighter can break his or her existing contract without any penalties. The only league we consider a ‘competitor’ from that stand point (e.g. actively competing for talent with UFC in the region, and not allowing fighters to freely jump to UFC if offered a contract from us) is One FC in Asia.”).

343. *Id.*

344. *Id.*

stand point (e.g. actively competing for talent with UFC in the region, and not allowing Fighters to freely jump to UFC if offered a contract from us).”³⁴⁵ ONE Championship has “occasionally serv[ed] as a player for high-value free agents like former Bellator champion Ben Askren.”³⁴⁶ Yet Askren has seen his ranking slip, despite an undefeated record at ONE Championship, due to a lack of high-quality opponents.³⁴⁷

127. ONE Championship also offered itself as a “feeder organization to UFC,” indicating that ONE Championship did not see itself as a direct competitor to Zuffa.³⁴⁸ Furthermore, a Zuffa Executive Vice President and managing Director of UFC in Asia was quoted in May 2013 as saying that he did not view ONE Championship as a competitor, but instead as a minor league helping to increase interest in the sport.³⁴⁹ Thus, the extent to which Fighters perceive ONE Championship to be a competitive alternative purchaser of Fighter services is dubious. Nevertheless, although ONE Championship is outside of the Relevant Geographic

³⁴⁵. *Id.*

³⁴⁶. Shaun Al-Shatti, *ONE Championship’s Victor Cui: ‘We’ve gotten a lot of interest’ since UFC-Reebok deal*, MMA FIGHTING, May 21, 2015.

³⁴⁷. Richard Mann, *Ranking Points for Highest Ranked Fighter by Promotion*, FIGHTMATRIX, Aug. 3, 2016. See also Shaun Al-Shatti, *Where in the world has Ben Askren been? Well, it’s complicated...* MMA FIGHTING (April 28, 2017) (“When Ben Askren signed with ONE Championship in late 2013, he was widely considered to be one of the most talented welterweight fighters in the world. He quickly did what many observers expected him to do, too, blitzing through back-to-back opponents to capture the ONE welterweight title with ease by mid-2014. But these days, nearly three years after he became ONE’s welterweight king, Askren still has yet to defend his belt in any official capacity, and not for a lack of trying.”).

³⁴⁸. In 2011, Victor Cui of One League wrote that “I believe that ONE FC is well positioned to be a feeder organization to UFC and if you have an interest in any of our fighters, I would be more than willing to offer them to UFC and to support you in as many ways possible.” See ZFL-1501599. Also, when Sean Shelby was trying to organize a UFC fight in Singapore in 2013, he wrote that although “it’s not normally possible” to get One FC Fighters released from their contract he would “see if I can pull [Leandro] Issa out from his one FC fight” to fight for Zuffa in Singapore. ZFL-1886668; ZFL-1897060 at 158.

³⁴⁹. Zuffa’s Response to Plaintiffs’ Request for Admission No. 256, 263. In addition, when Mark Fischer at UFC Asia noted in August 2012 that One FC “reportedly ...[has] ‘teams’ of people running around Asia trying to lock up fighters to 3-year or 5-year contracts, to corner the market vs all comers (including us)” that revelation appeared to cause little concern among Zuffa executives. See ZFL-2552141 at 41-42 (“Anyway, if you guys don’t see a problem with all this, then neither do I.”).

-87-

Market, as noted above, I conservatively include ONE Championship in my Ranked measure (the broadest measure of the Relevant Input Market).

4. Zuffa's Dominant Share in The Relevant Input Market and Submarket

128. To calculate Zuffa Fighters' share of the Relevant Input Market and Submarket (or Zuffa's share as a buyer), I divided the number of Zuffa's MMA Fighters by the total number of MMA Fighters in the Relevant Input Market and Submarket. Fighters in the Relevant Input Market were weighted by their associated promoters' PPV and gate revenues per Fighter, to reflect differences in the average quality of Fighters across different MMA promoters.³⁵⁰ Using unweighted Fighter counts makes little economic sense, given that Fighters (even within the defined Relevant Input Market and Submarket) are not homogeneous, and instead vary in their ability to attract viewers—and hence their value to an MMA promoter. For the Relevant Input Submarket, I also calculate an alternative metric in which Fighters are ranked by the inverse of their rank according to FightMatrix.

129. Figure 1 displays Zuffa's market share of the Relevant Input Market (measured both ways) and the Relevant Input Submarket from 2005 through June 2017. From the start of the Class Period through June 2017, Zuffa's share of the Relevant Input Market has fluctuated between 94 and 99 percent (using the Tracked measure) and between 71 and 91 percent (using the

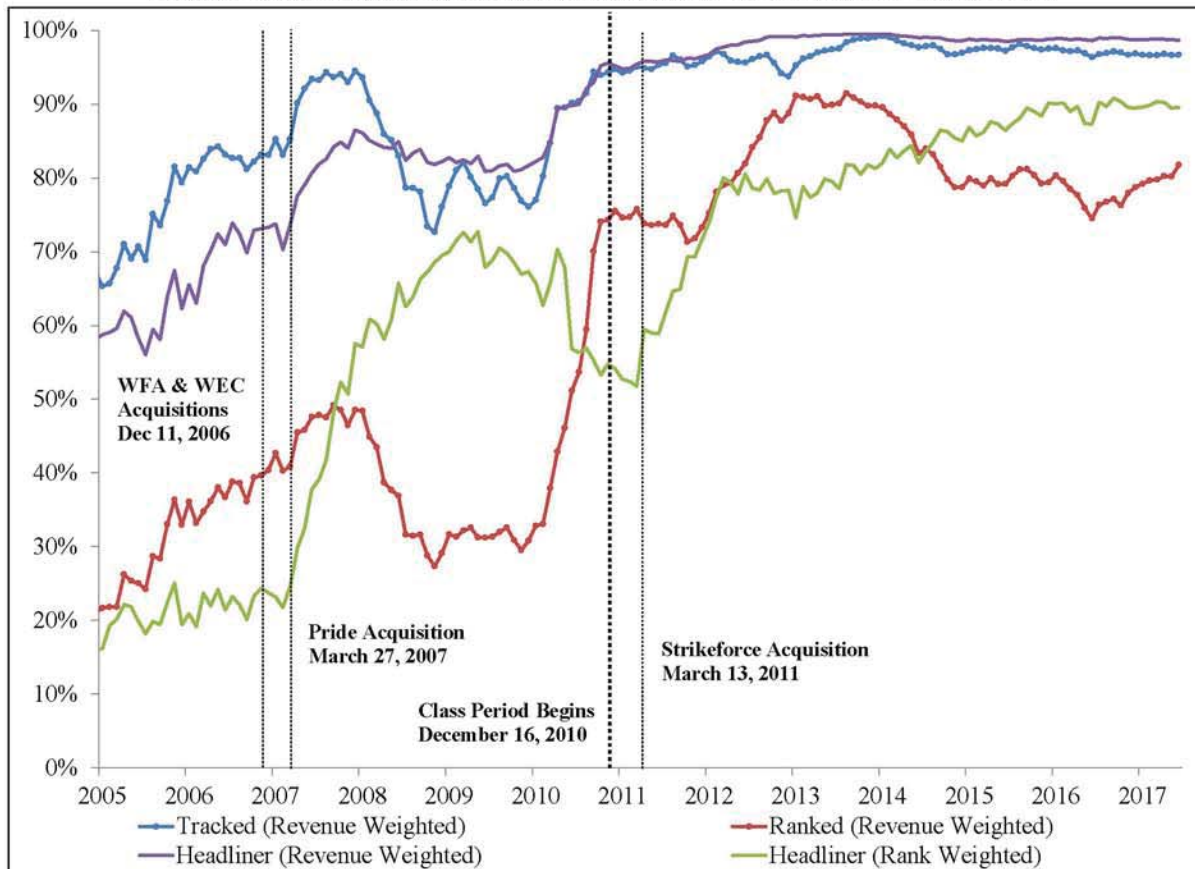
350. This approach is conservative because revenue data are available only for (relatively) large non-Zuffa MMA promotions such as Bellator and Strikeforce, so that Fighters from smaller promotions (which lack such data) receive the same weight as if they were affiliated with a larger promotion. Using public sources, I constructed a database of PPV revenue and gate revenue by promoter. Zuffa Fighters were weighted by the average revenue per Zuffa Fighter. Non-Zuffa Fighters were weighted by the average revenue per Fighter for non-Zuffa promoters. In the case of ONE Championship, I conservatively assigned Fighters a weight equal to 25 percent of Zuffa Fighters' weight, in light of evidence that ONE's valuation was reportedly "approaching" a valuation of \$1B at approximately the same point in time that Zuffa sold for \$4B. *See* Appendix 2 for details. *See also* James Goyder, *ONE Championship receives multimillion dollar investment from Singapore fund*, MMA MANIA, July 14, 2016 ("[T]he company is on course for a billion-dollar valuation...The UFC was sold for \$4 billion to a group led by WME-IMG and ONE Championship is on course for an IPO in the next 12 to 18 months.").

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

-88-

Ranked measure). From the start of the Class Period through June 2017, Zuffa's share of the Relevant Input Submarket has fluctuated between 95 and 99 percent (if Fighters are weighted by revenue) and between 52 and 91 percent (if Fighters are weighted by the inverse of their FightMatrix rank). From December 2011 through June 2017, Zuffa's share of the Relevant Input Submarket (however weighted) always exceeds 70 percent.³⁵¹

FIGURE 1: ZUFFA MARKET SHARE OF RELEVANT INPUT MARKET OVER TIME



351. Even this metric understates Zuffa's share in the Relevant Input Submarket, given that Zuffa's share is disproportionately high in the most prominent weight classes. See McGowan & Mahon, *supra*, at 1045 ("In regards to the title effects, welterweight (+223K/+227K), heavyweight (+196K/+202K), and light heavyweight (+134K/+130K) have the largest positive effects on [the UFC PPV] buy rate."). Among these three most prominent and important weight classes, Zuffa's (inverse rank-weighted) share has always exceeded 80 percent since the beginning of the Class Period.

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

5. Zuffa's Dominant Share in The Relevant Output Market

130. Zuffa's market share in the Relevant Output Market is the ratio of Zuffa's total revenue in the Relevant Output Market to the total revenues of all (Zuffa and non-Zuffa) MMA promoters in the Relevant Output Market. Although revenue data are not available for all non-Zuffa promoters in the Relevant Output Market, the available estimates of Zuffa's market share from industry analysts and press reports consistently indicate that Zuffa's market share has been approximately 90 percent by revenue since at least 2008.³⁵²

131. My own analysis of financial data produced for Strikeforce, Bellator and WSOF (the largest non-Zuffa promoters in the Relevant Output Market in recent years) confirms that these promoters represent only a small fraction of the revenues earned in the Relevant Output Market. Table 3 below calculates the combined revenue Bellator, Strikeforce, and WSOF as a proportion of the total revenue earned by these three MMA promoters, plus Zuffa's North American revenue. As seen below, since 2009, Strikeforce, WSOF, and Bellator's combined revenues have never represented more than nine percent of the total revenues earned by all four promoters, and have usually come to five percent or less, even under conservative assumptions.³⁵³ Consistent with these figures, a 2016 article in *Bloody Elbow* (an online periodical covering the

352. James Edwards, *ONE Championship and UFC is the story of East and West in the MMA market*, INDEPENDENT, April 19, 2016 ("UFC has got a 90-percent market share in the [United] [S]tates. We've got a 90-percent market share in Asia...."). See also ZFL-1241786 at 789 (July 2012 presentation by Brazilian Bank BTG Pactual estimating UFC has "more than 90% market share" and Elite XC, HD Net, Dream, Yamma, and StrikeForce account for 10%); ZUF-00401766-779 at 768 (April 2010 presentation by KO Associates asserts UFC: 90% market share by revenue"); ZUF-00421380-97 (August 2009 Strikeforce business plan cites Forbes Magazine for estimate that UFC "account[s] for 85-90% of industry revenues"); Matthew Miller, *Ultimate Cash Machine*, FORBES, April 17, 2008, available at <https://www.forbes.com/forbes/2008/0505/080.html> ("UFC is estimated to control 90% of the mixed martial arts industry."). See also ZUF-00157199 (internal UFC email from Randy Klein to Kirk Hendrick (January 7, 2009), citing market share estimate of 90 percent). See also ZIF-00401766-779 ("Mixed Martial Arts: UFC vs. Strikeforce" by KO Associates (April 28, 2010)) at 798 (showing market share estimate of 90 percent).

353. These figures are conservative because they are limited to Zuffa's event revenue for events in North America, and exclude all non-event-specific sponsorship revenue, which Zuffa does not disaggregate by geographic region. At the same time, the data reflect all revenue recorded for Strikeforce and Bellator, regardless of source.

-90-

MMA industry) concluded that “[w]hile competitors [to the UFC] like World Series of Fighting and Bellator do exist, the competition they offer seems very limited. Estimates for the WSOF and Bellator’s combined yearly revenue is roughly 1/20th that of the UFC.”³⁵⁴

TABLE 3: REVENUE AND SHARE ESTIMATES FOR STRIKEFORCE, BELLATOR, WSOF

	[A]	[B]	[C]	[D]	$\frac{[A + B + C]}{[A + B + C + D]}$
Year	Strikeforce (All Revenue)	Bellator (All Revenue)	WSOF (All Revenue)	Zuffa (NA Events*)	Combined Share of SF, BT, WSOF
2009	\$8.9M	--	--	\$236.8M	4%
2010	\$13.1M	\$3.1M	--	\$331.1M	5%
2011	--	\$5.4M	--	\$324.5M	2%
2012	--	\$9.2M	\$0.2M	\$256.4M	4%
2013	--	\$16.2M	\$1.4M	\$336.6M	5%
2014	--	\$21.0M	\$2.2M	\$239.0M	9%
2015	--	\$14.1M	\$2.1M	\$320.5M	5%
2016	--	\$18.3M	\$1.8M	\$498.1M	4%

Notes: *Restricted to Zuffa’s revenue for events in North America; excludes all non-event-specific sponsorship revenue, which Zuffa does not disaggregate by geographic region. In contrast, the data reflect all revenue recorded for Strikeforce, Bellator, and WSOF, regardless of source.

6. Natural Barriers to Entry

132. Natural barriers to entry are those that would-be entrants seeking to compete with Zuffa would face even in the absence of the Challenged Conduct. These include the “[s]ignificant fixed costs” that “are required to create content....”³⁵⁵ These also would include costs associated with “proper infrastructure, substantial content to market upcoming fights, effective television distribution...and adequate resources to satisfy the costs of a UFC-level production.”³⁵⁶ In

354. See John Nash, *Why do boxers make more than MMA fighters?*, BLOODY ELBOW, Aug. 23, 2016.

355. DB-ZUFFA-00006389 at 96.

356. *Id.* at 439 (“With such high barriers to entry, a competitor would need proper infrastructure, substantial content to market upcoming fights, effective television distribution, a deep line-up of marquee fighters and adequate resources to satisfy the costs of a UFC-level production... In order for a competing MMA organization to generate revenues comparable to UFC, the organization must be willing to invest significant capital in order to build the distribution network required to promote and broadcast major events, as well as create or acquire sufficient content to effectively market such events. Substantial capital would also be required for a competing organization to attract the

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

-91-

addition, increasingly widespread regulation in the industry “acts as a barrier to entry for smaller MMA organizations as state-sanctioning rules mandate proper insurance and medical coverage for fighters, which can be prohibitively expensive[.]”³⁵⁷

7. Artificial Barriers to Entry

133. Artificial barriers to entry are those that for would-be entrants seeking to compete with Zuffa incur as a result of the Challenged Conduct As explained in Part III.C.1 below, the Challenged Conduct has denied rivals access to the Fighters necessary to compete effectively with the UFC. Accordingly, the Challenged Conduct is an artificial barrier to entry and expansion.

8. Market Participants and Observers Viewed Zuffa As Dominant

134. Zuffa’s dominant position in the MMA industry is widely recognized by Zuffa and by third parties. A set of prepared Zuffa talking points tout “[u]nrivaled 360 degree ownership in the sports world. . . . No other organization of scale exists with similar ownership structure and control of content, brand, events and production[.]”³⁵⁸ Zuffa considers Bellator (the largest non-Zuffa MMA promoter since Zuffa’s 2011 acquisition of Strikeforce), to be only a “distant”³⁵⁹ competitor, with “fighters that could no longer compete at the UFC level.”³⁶⁰ Joe Silva testified that the UFC did not view Bellator or its Fighters as on the same level as the UFC.³⁶¹ Zuffa also

talent necessary to stage a successful event, while good matchmaking from a deep roster of talented fighters under contract is essential.”).

357. DB-ZUFFA-00006389 at 398 (“The UFC’s efforts to promote the widespread regulation of the MMA sport also acts as a barrier to entry for smaller MMA organizations as state sanctioning rules mandate proper insurance and medical coverage for fighters, which can be prohibitively expensive.”).

358. ZFL-2529699, at 1 (6/28, 2015 talking points for Apollo include: “Unrivaled 360 degree ownership in the sports world. . . . No other organization of scale exists with similar ownership structure and control of content, brand, events and production; with full decision making authority and flexibility.”).

359. In Moody’s 2014 draft credit opinion, describing Bellator as “a competitor of UFC,” UFC CFO John Mulkey inserted “distant”: “a [distant] competitor of UFC.” ZFL-1081154 at 55.

360. RAINE0018791 at 94 (“Fighters from UFC that are on Bellator are fighters that could no longer compete at the UFC level.”).

361. Silva testified that “if you gave [former two-time Bellator Lightweight Champion Eddie] Alvarez the shot and [UFC Lightweight Champion Benson] Henderson slipped on a banana peel and lost you will have given Bellator

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

regularly dismissed the significance of other MMA promoters generally.³⁶² Similarly, a 2012 Deutsche Bank Report dismissed the competitive significance of other MMA promoters generally and Bellator in particular:

In recent years in MMA, promotions that have tried to position themselves as the UFC's primary competitor, such as Bellator, have always failed. Bellator's most recent event at UC Irvine's Bren Center attracted only 4,000 people...None of the Bellator fighters are household names.³⁶³

135. Other promoters disavow any attempt to compete directly with Zuffa. In an investor prospectus dated September 2, 2016, Alliance MMA (formed through acquisitions of regional promoters) states that “[u]nder the Alliance MMA umbrella, we expect that our regional MMA promotions will identify and cultivate the next generation of UFC and other premier MMA promotion champions...”³⁶⁴ The Alliance prospectus clarifies its status as a “developmental organization” that explicitly avoids even the appearance of direct competition with a “premier national promotion,” (namely, the UFC):

[I]t is our intention to serve as a developmental organization for the UFC and other premier national MMA promotions in the same fashion as college athletic programs serve as “feeders” to professional sports leagues] ... [s]hould the UFC or another premier national MMA promotion view us as a threat they could use their significantly greater resources to frustrate our business and growth strategy and materially and adversely affect our business.³⁶⁵

the greatest Christmas present of all: Bellator's champ would jump from number ten to number one. Even just giving their former champion an immediate title shot puts Bellator on a level they don't deserve.” Silva Dep. at 216:21-217:5; Silva Exh. 16. He further explained that would “benefit Bellator” because “every promotion wants to be able to claim to be number one, to claim that you have the best fighters. That gives some teeth to that claim.” *Id.* at 220:8-12.

362. In an interview with FanHouse in December 2009, Dana White said “Let me ask you a question ... Do you think that there's any guy we can't get that we want? Other than Fedor [Emelianenko]?...But everyone else that we've wanted, we got.” ZFL-2461790 at 90. Feb. 12, 2011 email from Joe Silva to Dana White, subject line, “We Own MMA”, lists the MMA rankings from USA Today/SB Nation Consensus Rankings, which presents the top 25 Fighters in MMA for the seven major weight classes, and lists the ratio of top Fighters in each weight class controlled by Zuffa. ZUF-00085896. ZFL-2559292, 2010, Dana White news article quote noting that “other promotions...are not deep enough. There are not enough good fighters over there for them to challenge. There is here [the UFC], that's what makes it fun and interesting.”

363. DB-ZUFFA-00006389 at 439.

364. http://www.nasdaq.com/markets/ipos/filing.ashx?filingid=11067618#V448288_424B1_HTM_A_003

365. *Id.*

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

136. Even in the instances in which Fighters lack an explicit Zuffa-out clause, Zuffa has been able to recruit champions or other high-value Fighters from other MMA promotions. In March 2008, upon the request of Zuffa's Assistant General Counsel, Michael Mersch, Felix Martinez, the founder of Cage Fury Fighting Championship ("CFFC") consented to allowing Jim Miller to fight for the UFC and assigning his contract to the UFC even though Miller's contract prohibited him from fighting in any other promotion, unless approved by Martinez.³⁶⁶ In 2014, the World Series of Fighting ("WSOF"), an MMA promotion, released Ashlee Evans-Smith from her contract to compete in the UFC.³⁶⁷ In 2017, David Branch voluntarily relinquished both his light heavyweight and middleweight titles with WSOF, which granted his release to compete in the UFC,³⁶⁸ and WSOF Lightweight champion Justin Gaethje moved to the UFC despite claims by the President of WSOF that "Justin isn't a free agent."³⁶⁹ Of course, Zuffa has also gained access to the rosters of would-be rivals such as Strikeforce, Pride, WEC, and others simply by acquiring the promotions outright. Finally, to the extent that Fighters have switched from the UFC to another MMA promoter, they invariably have done so because of some change in status that made them significantly less competitive and thus no longer competitive at the UFC level—for example, a series of losses or injury—and not because other promoters provide viable competitive alternatives

366. See ZFL-2188190 ("I do not give Jim Miller permission to fight in the International Fight League (IFL), but I do consent in letting him fight for the Ultimate Fighting Championships (UFC).").

367. Sean Shelby texted Dana White on November 13, 2014 at 2:08:32 pm indicating that "Wsof [World Series of Fighting] is letting "Ashlee Evans-Smith] move over to ufc." ZFL-2699683. See also ZFL-2699687 (On May 13, 2015 at 18:27 pm, WSOF executive Ali Abdel-Aziz texts Dana White "Jessica Aguilar is the number 1 straw weight in the world. I want to release her to you guys." On May 16, 2015 at 22:57 pm, Abdel-Aziz wrote to White "We're gonna release Jessica only to you guys and we don't want any money...").

368. *Two-division WSOF champ David Branch relinquishes titles, heads to free agency*, MMA JUNKIE, Feb. 6, 2017; see also Steve Juon, *Former WSOF dual-weight champion David Branch re-signs with UFC*, MMA MANIA, Feb. 15, 2017.

369. Steve Juon, *Justin Gaethje tests free agency, but WSOF still holds matching rights*, MMA MANIA, Mar. 30, 2017; see also John Morgan, *Justin Gaethje on new UFC deal: "Now I get a chance to prove I'm the best in the world."* MMA JUNKIE, May 5, 2017; Mersch V.I Tr. 93:1-6 (stating that Justin Gaethje, who was a World Series of Fighting Champion in his weight class, left the World Series of Fighting for the UFC).

for UFC Fighters.³⁷⁰ (As explained in Part II.C above, the Challenged Conduct makes it extremely difficult, if not practically impossible, for Fighters that Zuffa wishes to retain to defect to another MMA promotion).

137. In its pre-acquisition analysis, WME-IMG analyzed nine distinct “Key Diligence Focuses,”³⁷¹ such as “Fighter compensation inflation risk,”³⁷² and “Leverage levels in the near term.”³⁷³ Not included among the nine Diligence Focuses is any competitive risk posed by potential rivals to Zuffa. Instead, the analysis notes that the Zuffa acquisition is a “Rare Ownership Opportunity in Sports,”³⁷⁴ given that the “Vast majority of sports leagues are not ‘buyable.’”³⁷⁵ Put differently, Zuffa’s current owners view the UFC as a sports league unto itself (like the NBA or the NFL), as illustrated in Figure 2.

370. Fighters that can no longer compete in (or are simply “cut” from) the UFC often end up in other “minor league” promotions. For example, Jeff Aronson of Titan FC explained that “No one is going to take on Zuffa and win at this point. It’s just not going to happen, and I have no aspirations to do that. I am very happy to do that carving my place and my niche giving young fighters the best platform in the word to shine on, and giving vets the opportunity to come and shine.” *See also* Aronson Dep. at 31:10-32:4; ZFL-1112933 at 33 (“Bellator has old ex UFC fighters that are way past their prime.”); Ethan Finkelstein, *WSOF New PPV Model to Award 50 Percent to Fighters*, FANSIDED, Sept. 23, 2014 (“Considering that World Series of Fighting’s biggest names are currently former UFC contenders (notice how I did not say champions), the situation looks bleak for now.”).

371. WME-ZUFFA-00001150 at *7.

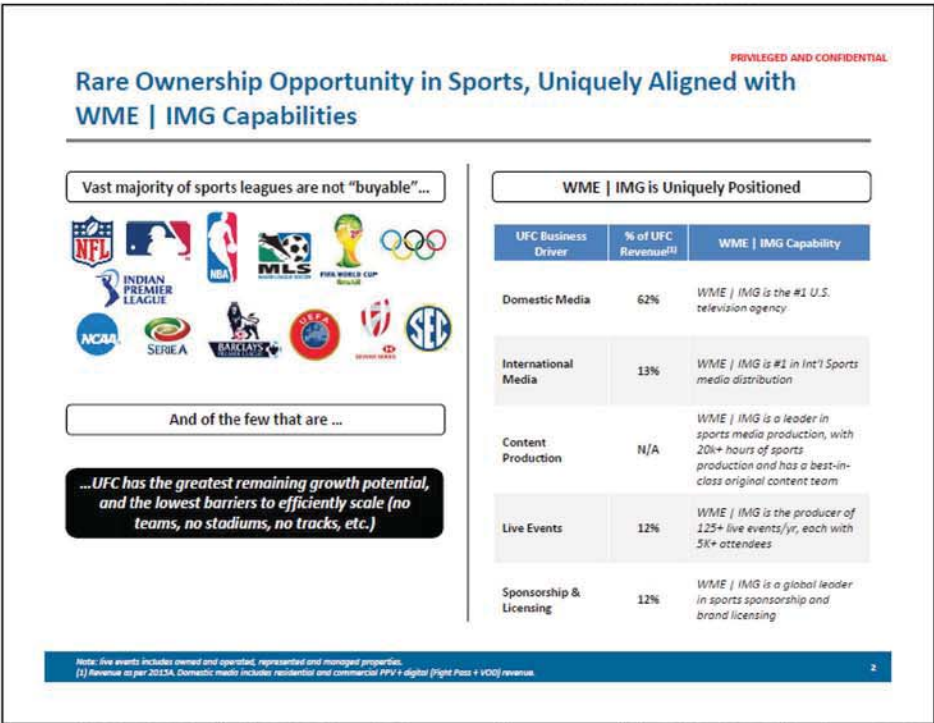
372. *Id.*

373. *Id.*

374. *Id.*

375. *Id.*

FIGURE 2: SLIDE FROM WME-IMG PRESENTATION



Source: WME-ZUFFA-00001150 at *7 (presentation prepared by WME-IMG in June 2016, just prior to WME-IMG's acquisition of Zuffa in August 2016).

In a June 2010 interview with *MMA Junkie*, Dana White remarks:

There was a time when it was neck-and-neck. That time is over. There were times when we were in dogfights, but everybody needs to just concede and realize we're the [expletive] NFL. Period. End of story.³⁷⁶

In a May 2010 email string, Edward Muncey puts together bullet points "that reinforce[] why *Yahoo! Sports* recognizes the UFC brand as the eminent entity in the sport of MMA." The first major point read:

Like the other major sports properties (e.g. NFL, MLB, NBA, NHL) in their respective categories, the UFC has no close 2nd place. As the NFL is the defining brand of Football, UFC is the defining brand of mixed martial arts.³⁷⁷

376. John Morgan, *Dana White stands by 'pay for rankings' claim, says UFC is the NFL of MMA*, MMA JUNKIE, June 14, 2010, available at <http://mmajunkie.com/2010/06/dana-white-stands-by-pay-for-rankings-claim-says-ufc-is-the-nfl-of-mixed-martial-arts>.

377. See ZUF-00395941.

138. In an interview with ESPN's "Outside the Lines" released by Zuffa on January 16, 2012, Lorenzo Fertitta stated "[t]here never has been a comparable outlet [to the UFC]. There never has been. When has there ever been a comparable outlet? We've dominated this, this sport, alright? We've dominated the space[.]"³⁷⁸ Similarly, in March 2014, at The Leaders Sport Summit in London, England, Lorenzo Fertitta stated that

[A]t the end of the day, we really have kind of become the gold standard in a sense. When you look at the top 10 in every division, we've got every fighter under our umbrella. All the fighters want to be with us because they want to fight the best competition. So from that standpoint, I think there is really—the competition isn't really relevant in that sense[.]³⁷⁹

Third-party evaluators have also emphasized Zuffa's market dominance, and the profitability that comes with it. A 2009 Deutsche Bank report notes that "UFC holds the dominant market position within the sport and continues to do so even as a highly fragmented group of competitors have entered the market in an attempt to emulate UFC's success."³⁸⁰ A 2012 Deutsche Bank report states that the 2007 PRIDE acquisition "solidified UFC's #1 position in the MMA market,"³⁸¹

378. Zuffa's Response to Plaintiffs' Request for Admission No. 17.

379. Zuffa's Response to Plaintiffs' Request for Admission No. 32.

380. ZUF-000162329-382 (October 2009 Deutsche Bank Report, "\$100,000,000 Incremental Term Loan": 356 ("...the UFC holds the dominant market position within the sport and continues to do so even as a highly fragmented group of competitors have entered the market in an attempt to emulate UFC's success").

381. A 2012 Deutsche Bank Credit Finance Report notes, "The UFC acquired PRIDE Fighting Championships in mid 2007, which was its number one competitor and formerly the second largest MMA association in the world, having a very strong presence in Japan. This acquisition solidified UFC's #1 position in the MMA market[.] The Company subsequently acquired World Extreme Cagefighting in October 2006, which it merged with the UFC in October 2010, and also purchased Strikeforce in March 2011[.] These acquisitions have further cemented the Company's dominant position in MMA, and along with the UFC's powerful brand name and full ownership[.]" DB-ZUFFA-00006389 at 98. The same report notes that "MMA in the United States is dominated by UFC. While there is no indication UFC's dominance will wane anytime soon, there are some who follow the industry that suggest that there may be some risks. The primary risk being the possibility of UFC fighters defecting to other promotion companies over pay disputes. The possibility of this occurring is remote as UFC has no match in the industry relative to overall management capabilities, promotion and public relations savvy. Furthermore, with the merger between sister promotion World Elite Cagefighting ("WEC") and UFC, as well as the acquisition of Strikeforce, the Company has virtually no competition left. Therefore it is strongly believed that UFC will maintain its domineering position for the foreseeable future." *Id.* at 6403. "Furthermore, with the acquisition of PRIDE Fighting Championships and its absorption into UFC, the acquisition of World Elite Cagefighting and its subsequent merger with UFC, as well as the purchase of rival promotion Strikeforce, the Company has established itself as the outright leader in the MMA market." *Id.* at 6439.

-97-

while subsequent acquisitions “further cemented the Company’s dominant position in MMA, and along with the UFC’s powerful brand name[.]”³⁸² A 2010 announcement by Moody’s upgrading Zuffa’s rating outlook emphasized

Zuffa’s continued strong revenue and EBITDA growth trends worldwide...the increasing mainstream acceptance of the sport of mixed martial arts’ (MMA) popularity and particularly so for industry leading UFC...[Zuffa’s] premium MMA platform and UFC brand, sturdy credit metrics, strong free cash flow and superlative international revenue growth prospects.³⁸³

Such optimism implicitly discounts the prospect of some potential rival MMA promoter on the horizon.

139. A 2012 Deutsche Bank Credit Finance Report notes that “with the merger between sister promotion World Elite Cagefighting (“WEC”) and UFC, as well as the acquisition of Strikeforce, the Company has virtually no competition left... it is strongly believed that UFC will maintain its domineering position for the foreseeable future.”³⁸⁴ The report goes on to describe various “competing upstarts,”³⁸⁵ which “have attempted to replicate the success of UFC and failed.”³⁸⁶

382. DB-ZUFFA-00006389 at 98.

383. Moody’s Investors Service, “Announcement: Moody’s Changed Zuffa LLC’s (d/b/a Ultimate Fighting Championship or UFC) Rating Outlook to Positive from Stable,” (December 1, 2010), *available at* https://www.moodys.com/research/Moodys-Changed-Zuffa-LLCs-dba-Ultimate-Fighting-Championship-or-UFC--PR_210184.

384. ZUFFA-00006389 at 6403; *see also* DB-ZUFFA-00054280 (July 2011 Internal Deutsche Bank email in which an analyst working on the Zuffa account wrote that a Washington Times article concerning the collapse of an MMA promotion “Strengthens our point about there being zero competition [to the UFC].” (citing <http://www.washingtontimes.com/news/2008/jun/17/ufc-beating-down-rivals/>)).

385. *Id.* at 6439.

386. *Id.* *See also* ZFL-1544038 at 84 (December 2012 Information Memorandum prepared by The Raine Group and Itau BBA to market an equity investment in Zuffa Brazil, stating that UFC has a “Unique and Difficult to Replicate Business Model...no competitors on a domestic or global basis.”). As late as March 2016, the Raine Group was still representing to potential investors that “1) Given its long history and financial success, the UFC is able to attract top talent by offering the highest compensation to its athletes. Other smaller leagues are not able to compete given the UFC’s size and scale. 2) UFC is the clear leader in combat sports and a globally-recognized brand. Other MMA leagues are smaller and do not have the same premium brand.” *See* RAINE0020542 (Item 2.3 at line 91).

HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER

140. In summary, the combination of dominant market shares and barriers to entry allows me to conclude that Zuffa has significant monopoly power in the Relevant Output Market and monopsony power in the Relevant Input Market and Submarket.

9. All Indirect Evidence and Analysis of Zuffa's Market Power Is Common to the Classes

141. All of the indirect evidence of Zuffa's market power, and my analysis of it, is common to the Classes as a whole. If I were asked to analyze indirect evidence of market power for any single member of either Class, the evidence and analysis would be the same.

B. Direct Evidence of Zuffa's Market Power

142. The direct evidence reviewed here demonstrates that Zuffa has monopoly power over Live MMA Events and monopsony power with respect to its Fighters. Direct evidence of monopsony power includes evidence of Zuffa's ability to profitably suppress Fighter compensation, and to restrict the supply of Fighter services. Direct evidence of Zuffa's monopoly power includes evidence of Zuffa's ability to profitably exercise its pricing power over Live MMA Events, and to restrict the supply of Live MMA Events. Finally, there is direct evidence of Zuffa's ability to exclude or impair rivals or potential rivals.

1. Direct Evidence of Power to Suppress Fighter Compensation Below Competitive Levels

143. The ability to suppress compensation below competitive levels constitutes direct evidence of Zuffa's substantial market power, and in particular, monopsony power. In Part III.D below, I use regression analysis to show that there is a negative relationship between Fighter compensation (measured as a share of event revenues) and the extent to which Zuffa's long-term exclusive contracts foreclosed its Fighters from rivals (a measure of Zuffa's market power). This analysis shows that, as the share of Fighters (key inputs to an MMA promotion) foreclosed by Zuffa increases, Zuffa is able to pay its Fighters a lower share of its event revenues. The result is

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highly significant in both a statistical and an economic sense, and the result holds after controlling for a wide range of factors that may also influence Fighter compensation. Nothing in the record indicates that Zuffa suffered significant Fighter defections as a result of reducing the share of revenue paid to Fighters, suggesting that its exercise of monopsony power was profitable.

144. Additional direct evidence of suppressed Fighter compensation includes: (1) evidence that Zuffa has reduced the share of revenue paid to Fighters over time; (2) evidence that Zuffa pays a significantly lower share of its revenues than Strikeforce (before the acquisition) or Bellator; and (3) a natural experiment in which Zuffa unilaterally restricted Fighter compensation by imposing a new sponsorship tax.³⁸⁷ Again, nothing in the record indicates that Zuffa suffered significant Fighter defections, suggesting that these exercises of monopsony power were profitable.

2. Direct Evidence of Power to Restrict the Supply of Fighter Services.

145. The ability to restrict the supply of Fighter services below competitive levels constitutes additional direct evidence of monopsony power. Zuffa restricted the supply of Fighter services by consistently maintaining significantly more Fighters under contract than it could use, creating forced periods of inactivity during which Fighters were not paid and were not available to other MMA promoters to fight. In addition, Zuffa pursued a strategy of restricting the number of career paths available to Fighters.³⁸⁸

146. If Zuffa lacked monopsony power, the excess Fighters on Zuffa's roster could have earned income from other promoters, rather than being bound to Zuffa during periods of forced inactivity (during which they did not get paid). Similarly, in the absence of monopsony power,

387. See Part III.D.3, *infra*.

388. See Part III.D.4, *infra*.

Zuffa could not have restricted Fighter career paths, because Fighters would have defected to other MMA promoters.

3. Direct Evidence of Power Over Pricing of Live MMA Events

147. The ability to raise the price of Live MMA Events above competitive levels, without suffering a sufficiently large defection in viewers to render the price increase unprofitable, constitutes direct evidence of Zuffa's monopoly power. Zuffa has implemented substantial price increases over time, including a 24 percent PPV price hike from 2010 to 2015, the time period when Zuffa's foreclosure of the Relevant Input Market and Submarket increased significantly, and during which Zuffa acquired Strikeforce. The profitability of this price hike is evident from the inelastic demand response to the price hike. More generally, the profitability of Zuffa's price increases is evident from the fact that they were not reversed. Zuffa could not have profitably imposed these price increases without monopoly power.³⁸⁹

4. Direct Evidence of Power to Restrict the Supply of Live MMA Events

148. The ability to restrict the supply of Live MMA Events constitutes direct evidence of monopoly power. Evidence that Zuffa was able to do so includes Zuffa's imposition of a significant and profitable restriction in PPV output between 2010 and 2015, during which Zuffa's foreclosure of the Relevant Input Market and Submarket increased significantly, and Zuffa acquired Strikeforce.³⁹⁰ Given that Zuffa was essentially the only MMA promoter offering PPV events over this timeframe,³⁹¹ the industry supply of PPV events was also restricted. Zuffa's could not have profitably restricted the output of PPV events in the absence of monopoly power. Zuffa

389. See Part III.D.5, *infra*.

390. See Figure 1, *supra*; Parts III.D.5-6, *infra*.

391. Bellator put on a single PPV event in 2014. See <https://www.bloodyelbow.com/2017/6/25/15870964/spike-executive-bellator-nyc-the-first-of-many-ppv-events-running-mma-news> (stating that Bellator's debut PPV event was in 2014; Bellator hosted its second-ever PPV event in June 2017). In contrast, Zuffa put on 12 PPV events in 2014.